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AUTHOR Lieberman, Myron
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ABSTRACT

This study identified and evaluated state legal constraints on educational productivity. Three possible legal constraints on productivity were identified: (1) state laws providing for administrative tenure, (2) state legislation on sabbatical leaves, and (3) state laws on terms and conditions of employment for teachers. Relevant statutes were identified and analyzed for this study. Proposed federal legislation that would affect these state statutes, and hence educational productivity, was also analyzed. The major conclusions and recommendations are as follows: (1) legislated terms and conditions of educational employment are responsible for significant inefficiencies that vary considerably from state to state; (2) the state legislation on educational employment is largely inconsistent with a bargaining approach to educational employment; (3) the emergence of state public employee collective bargaining legislation provides a feasible rationale for repeal or modification of statutory terms and conditions of employment that generate major inefficiencies; and (4) both state and federal public employee bargaining laws, if enacted, should resolve potential conflicts between contractual agreements and state statutes and, insofar as feasible, eliminate state restrictions on educational productivity. (Author)

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FINAL REPORT

PROJECT NO. 3-0231

GRANT NO. HEG-00-3-0112

IDENTIFICATION AND EVALUATION OF LEGAL CONSTRAINTS ON EDUCATIONAL PRODUCTIVITY

MYRON LIEBERMAN

BARUCH COLLEGE

THE CITY UNIVERSITY OF NEW YORK

NEW YORK, NEW YORK 10010

JUNE 1, 1975

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Author's Abstract

The purpose of this study was to identify and evaluate state legal constraints on educational productivity. Three possible legal constraints on productivity were identified: (1) state laws providing for administrative tenure; (2) state legislation on sabbatical leave; and (3) state laws on terms and conditions of employment for teachers. With some variations, the methodology consisted of identification and analysis of relevant statutes, review of appropriate literature, discussions with appropriate experts, interest group leaders, and consultants, and dissemination of position papers for review. Proposed federal legislation which would affect these state statutes, and hence educational productivity, was also analyzed.

The major conclusions and recommendations are as follows: (1) legislated terms and conditions of educational employment are responsible for significant inefficiencies which vary considerably from state to state. (2) the state legislation on educational employment is largely inconsistent with a bargaining approach to educational employment; (3) the emergence of state public employee collective bargaining legislation provides a feasible rationale for repeal or modification of statutory terms and conditions of employment which generate major inefficiencies; (4) both state and federal public employee bargaining laws, if enacted, should resolve potential conflicts between contractual agreements and state statutes and insofar as feasible, eliminate state restrictions upon educational productivity.

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I. Introduction

A. Background for the study.

Originally, this study was an attempt to identify and evaluate specific state legal constraints upon educational productivity. A number of considerations suggest that studies of this kind would be helpful to legislators and educational policy-makers, especially at the state and federal levels. These considerations are as follows.

1. The importance of productivity. As pointed out by the National Commission on Productivity, productivity improvement is important to our economy in at least three important ways.

a. It can be an important factor, in reducing inflationary pressures on goods and services.

b. It is essential to maintain the competitive position of the U.S. economy.

c. It is an important way to improve work morale and quality and to help improve labor-management relations.

In fact, the establishment of the National Commission on Productivity in 1970 (Public Law 93-311) is itself a recognition of the importance of increasing productivity.

2. The importance of the public sector in productivity improvement. The national concern with increasing productivity cannot ignore the public sector. About 1 of every 6 full-time employees work for a government agency, federal, state, or local. Government expenditures for goods and services constitute almost 22 percent of GNP. State and local government account for over 13 percent of GNP, a proportion which is likely to increase substantially in the next decade.

3. The enormous dimensions of education. Overall, about 29 percent of the entire population is involved in the educational enterprise, 58.6 million as students and 3.2 million as staff. Public expenditures for education below the college level were over \$100 billion, and required over 40 percent of state revenues. Obviously, any basic effort to increase the productivity of the public sector must confront the issue in the field of education.

4. The enormous costs of education and the widespread interest in realistic evaluation of its effectiveness. This widespread interest is reflected in several different ways; e.g., by the emergence of the accountability movement in education, by books and articles raising critical questions about the impact of schooling, and by increased voter resistance to educational expenditures.

5. The fact that most of the broad policies which influence educational productivity are state prerogatives. Under our governmental system, the states exercise (inter alia) legal authority over the following matters:

- a. Whether there shall be compulsory education
- b. Minimum age of school entry and school leaving
- c. The number and kind of school districts
- d. The nature of the educational program
- e. Qualifications of educational personnel
- f. Ways of raising school revenues
- g. Regulation of pupil services, such as for health transportation
- h. Structure and operations of school governance
- i. Duration of the school year and school day
- j. Establishment and maintenance of special schools, such as for the deaf, blind, or retarded

The above list is not exhaustive. Neither is it intended to deny that other levels and units of government can and do have a significant impact upon educational productivity. Thus federal funds are sometimes made available to school districts, usually through the states, only upon conditions which might or might not be conducive to optimal efficiency. Furthermore, although the states set minimum qualifications for educational personnel, their actual employment and supervision is usually a local responsibility. The way in which local school districts exercise this responsibility is unquestionably an important factor in their educational productivity. Nevertheless, although the states are not the sole determinant of educational effectiveness, state policies are obviously crucial elements in educational effectiveness.

Most efforts to improve educational effectiveness attempt to do so by improvements in educational technology, broadly conceived. Efforts to improve teaching aids and materials, teaching skills, diagnostic and remedial instruments and processes, and curriculum materials can be viewed in this light. This study approaches productivity improvement from a different perspective. It is intended to raise the question of whether educational productivity can be increased, even at its present level of technology, by elimination or modification of certain legal constraints upon education. This

approach is not meant to question the importance of improving educational technology in any way. It is intended to complement that approach. Furthermore, the rate of future improvements in educational technology is uncertain. Such improvements may or may not emerge rapidly. Regardless, there is need to identify opportunities for productivity improvement which are not dependent upon technological advances. Significantly, one outcome of the September, 1974 "economic summit" devoted to controlling inflation was a recommendation that federal laws having a negative impact upon productivity be eliminated or revised. The present study adopts the same rationale, except that its focus is upon state legislation related primarily to education.

As used in this report, productivity is a relationship between the resources used and the outcomes achieved. For example, if a constant number of French teachers could bring about a constant level of proficiency in French to a much larger number of pupils by new teaching techniques or by using language laboratories which cost less than the savings involved, there would be an increase in the productivity of French teachers.

Most objections to applying the concept of productivity to education result from confusing the concept with erroneous applications of it. For example, increasing class size does not necessarily result in greater teacher productivity; whether it does or not would depend upon the impact of the increase upon pupil achievement. Furthermore, all the outcomes of instruction must be considered in order to assess productivity. Thus an increase in class size resulting in no decrease in academic achievement might not be an increase in productivity if accompanied by an increase in vandalism or greater teacher turnover.

The report also uses the phrase "educational efficiency" as synonymous with educational productivity. Inefficiencies are opportunities to increase productivity. In order for inefficiencies to exist, educationally equivalent outcomes must be achievable with less resources, or better results must be achievable with the same resources, or some combination of these alternatives must be possible. However, the allocation of any real savings resulting from increased productivity is essentially a political issue which is outside the scope of this study. The allocation is important since it often affects the response of interest groups to proposed efficiencies. Theoretically, the savings could be allocated to other public services, used to increase teacher salaries or lower taxes. As a matter of fact, confusion over this point underlies a great deal of educational thinking about the concept of productivity. For example, the fear that increased productivity will be used to lower teacher salaries or decrease the number of teachers often underlies the teacher hostility to the concept of educational productivity.

B. Legal scope of the study

State policies affecting education emerge in a variety of legal forms. The same policy, such as a requirement that teachers must be U.S. citizens, may be a constitutional requirement in one state, a statutory one in another, and a state board of education policy having the force of law in still another. In still another state, the issue may be delegated to local school districts which have the authority to make and enforce rules that do not contravene state and federal mandates.

The pervasiveness of state regulation, and the variety of legal forms which can be used to implement the same policy also required some limitations upon this study. Essentially, therefore, the study was limited to state legislation. State constitutional constraints, or state constraints embodied in state board of education or state department of education policies were usually excluded unless readily available, even if these constraints are other wise identical to the statutory ones analyzed in the study. In fact, the study had to be limited largely to the statutory terms and conditions of employment which are embodied in the state education codes of the various states. Legislation which affects terms and conditions of teacher employment but is not included in the state education codes is ordinarily not included. A state law which makes a certain date a legal holiday in the state, thereby closing the schools thereon, is an example of the latter kind of legislation.

Fortunately, it is virtually certain that the conclusions and recommendations reached are not materially affected by the limitations just outlined. State constitutions occasionally impinge directly upon teacher terms and conditions of employment; e.g., a state constitution may limit the employment contracts of public employees in the state to one year's duration. However, such constitutional provisions appear to be infrequent. Furthermore, the more frequent they are, the more they would reinforce rather than weaken the conclusions reached. More importantly, the conclusions reached are not affected by minor fluctuations in the number of states characterized by a particular constraint.

C. Changes in the objectives of the study

During the course of this study, however, an emerging development virtually dictated a modification in the original objectives. This emerging development was proposed federal legislation providing collective bargaining rights for state and local public employees. The relationships between such proposed legislation and the original objectives of this study were simply too fundamental to be ignored. On the one hand, the study as originally envisaged would have attempted to identify state legal constraints upon educational productivity. On the other hand, at least one bill introduced in both the 93rd and 94th Congress would have preempted most if not all of the state legislation which was the subject matter of this study. In brief, such legislation would have "solved" the problem before this or any other study could have established the fact that there was a problem to be solved. Further investigation revealed that the potential impact of federal public employee bargaining legislation upon educational productivity was simply not considered in the debate or hearings on such legislation. Inasmuch as the proposed federal legislation would have had an enormous but unintended and unrecognized impact upon state legislation on terms and conditions of teacher employment, and hence upon educational productivity, it was deemed essential to analyze the proposed federal legislation from this perspective. Therefore, instead of continuing with efforts to develop a more precise estimate of state mandated inefficiencies, attention was focussed upon the potential impact of proposed federal legislation upon the state legislation giving rise to the inefficiencies. Indeed, the latter issue became a main focus of the study, partly because this study appears to have been the first in the field of education to address the issue.

D. The choice of constraints

The pervasive nature of state regulation forced some decisions concerning the kinds of constraints to be studied. Originally, this study was to be limited to legislation related to professional personnel. Pursuant to this premise, the legislation analyzed deals with administrative tenure and sabbatical leave in some detail. The rationale for these choices is explained in the chapters which discuss the legislation on these subjects. For reasons to be explained in Chapter VI, the study was broadened to include a comprehensive but much less detailed analysis of a broad range of statutes on educational employment. Some attention was also given to statutes dealing with school attendance, since such statutes not only are closely related to terms and conditions of employment but also have major implications for productivity from the perspective of pupil achievement.

E. Procedural notes

Because different kinds of legislation are involved, and there are different as well as common elements in the procedures used, conclusions reached, and recommendations made, each category of legislation has been analyzed separately. Regrettably, this results in some repetition and overlap but it is hoped that the various chapters can be used separately as the need arises.

In view of the lack of mathematical precision in estimating inefficiencies, it should also be emphasized that the purpose of the study was to provide some guidelines for formulating educational policy. The wide dissemination and use made of preliminary excerpts from the study suggest that this hope is already being realized.

II. Administrative Tenure

A. Statement of the Problem

Managerial quality is an important factor in the productivity of any large enterprise. Some authorities regard it as a major cause of the high levels of productivity in the U.S. economy. Without endorsing any particular effort to quantify the importance of managerial quality both common sense and economic analysis testify to its importance.⁽¹⁾

Such importance is not confined to the private sector. At a common sense level, it would be surprising if the quality of management was not an important element in the productivity of the public sector. This common sense observation is reflected in a variety of ways. A growing body of professional literature on public management is devoted to ways and means of increasing its productivity. The National Commission on Productivity, a federal agency which was established in 1970, has initiated a series of studies on the productivity of public services. These studies have not included any studies of productivity in education, but concern for productivity in the public sector cannot ignore an activity in which 1 of every 4 persons in the country is involved on a full-time basis. It is also significant that a number of foundations have recently supported projects designed to increase productivity in the public sector.

The fact that public services, such as public education, are not carried on for profit has confused some into believing that the concepts of management and productivity are not applicable to the public sector. This view reflects a confusion between a common outcome of greater productivity in the private sector (increased profits) with the concept of productivity per se, which is basically a relationship between resources used and outcomes. Such relationships are just as important in the public as they are in the private sector.

Although management is an important element of productivity in both sectors, there are significant differences in the contexts within each management operates in the two sectors. For example, key managerial decisions in the public sector are inevitably influenced by political considerations; those in the private sector may or may not be. Public management operates within a complex set of constitutional, statutory, and administrative factors, many of which do not apply in the private sector or do not apply in the same way.

Undoubtedly, one of the most important differences, at least insofar as public education is concerned, is the legal protection against dismissal accorded certain kinds of management personnel in education. In the private sector, management has only contractual protection against dismissal (constitutional protections, such as prohibit dismissal based upon racial, religious, or sexual discrimination, do not materially affect the analysis). By and large, management in the private sector is not legally protected against abrupt dismissal, even in cases where management personnel are performing competently. On the other hand, administrative employees in public education appear to have more job protection than their counterparts in the private sector. The question which concerns us is whether and/or to what extent these protections exist and adversely affect educational productivity.

To facilitate clarity in the following analysis, "tenure" and "administrator" are defined as follows:

1. Tenure is defined as a state of continuing employment in which school boards must comply with procedural requirements of notice, statement of charges, and right to a hearing before an administrator can be dismissed or refused reemployment.(2) It was not always clear whether a specific state law provided "tenure" or not; individuals familiar with the statutes in these marginal states might interpret the identical statutes as not providing "tenure." However, the specific title of the statutes was not the controlling factor. Some statutes labeled "tenure" laws actually provide less employment security than statutes labeled "continuing contract law", "fair dismissal law," and so on.

It should also be noted that recent Supreme Court decisions provide some elements of due process for non-tenure teachers who are not reemployed. (See Perry v. Sindermann, 92 Supreme Court 2694, 1972, and Board of Regents of State Colleges v. Roth, 92 Supreme Court 2701, 1972). The applicability of these decisions to public school administrators, and their effects even if applicable, are outside the scope of this study.

2. In conventional labor relations terminology, employer representatives are typically labeled as "managerial" or "supervisory." Thus under the National Labor Relations Act (NLRA), "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection

with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The term "manager" is generally applied to upper echelon personnel with policy-making authority. Thus a foreman on an assembly line would be a "supervisor," whereas a plant director of personnel would be classified as "management."

In education literature, the term "management" is seldom used, and "supervisor" often has a meaning somewhat different from its meaning in the private sector. In the educational context, a "supervisor" is usually someone who exercises staff leadership in a subject or subject area, e.g., music or art or science. The supervisory functions as defined in the NLRA are usually carried out by principals, assistant or vice-principals, and department chairmen. At the same time, the term "administrator" is typically applied to individuals who exercise broad policy-making roles in school systems.

In this study, the term "administrator" is used to encompass both supervisory and managerial personnel. It also encompasses staff positions which do not necessarily involve control or direction of subordinates but which are clearly associated with management. For example, a school system might have a director of research or of public relations who has no subordinates except a secretary. Such personnel are not primarily supervisory and they are not usually managerial in the sense of making broad policy for the district. They are, however, included in the category of administrative personnel in this study. Thus references to "administrators" or "administrative personnel" in this study are meant to include managerial and supervisory personnel as well as the more limited group of staff personnel who do not exercise line responsibilities in school systems. When it is said that a state has tenure for administrative personnel, the meaning intended is that it provides tenure for at least some of these categories of administrative personnel.

B. Procedures

First, an attempt was made to identify the states which have legislated some form of administrative tenure. Because coverage was not always clear from the statutes themselves, letters or telephone calls were used to clear up questions of coverage in a number of states.(3)

A general search of the literature was also conducted with a two-fold purpose:

1. To identify current perspectives on the values of administrative tenure as it presently exists, and on any current proposals for revision.
2. To identify the history of administrative tenure in public school districts.

The following indices and research tools were employed.

1. Current Indices to Journals in Education (searched 1969 through 1973).
2. DATRIX (search through 1969).
3. Education Index (search July 1967 to present).
4. ERIC (complete search).
5. Reader's Guide to Periodicals (July 1967 to present).

Unfortunately, current professional literature fails to shed any significant light on the subject of administrative tenure, and is badly deficient in this regard. There is a substantial amount of professional literature on tenure (see bibliography), but the overwhelming majority of references simply ignore the subject of administrative tenure. With minor exceptions, general textbooks on school administration also fail to view tenure as something other than a "given", and show no perception of a possible policy difference between tenure for teachers and tenure for administrators. The history and development of tenure, and the social and political influences leading to it, receive no analysis and little attention. In 1969-70, the New Jersey School Boards Association conducted an extensive study (4) of tenure which concluded the superintendent's tenure should be abolished, but middle echelon tenure remain unchanged. It is of some interest that four years after the report was submitted, the issues were still controversial ones in New Jersey but no changes had been made.

Efforts to assess the impact of administrative tenure by systematic studies were not feasible within the scope of the study. Problems included differences in statutory coverage, inadequate opportunity to distinguish statutory from non-statutory factors, tremendous variations in dollar values attached to certain outcomes, and the fact that the time and costs of any questionnaire would have been prohibitive. As a result, assessment of outcomes emphasized interviews and review of the literature, the latter being singularly unproductive. Interviews were conducted both on a one-to-one basis and in small groups at conferences and meetings, usually when other issues were also raised. These procedures sought to elicit critical incidents since systematic data was clearly unavailable.

The interest group positions were elicited by letter or telephone or interview with organization officers. In most cases, however, the issue had been ignored organizationally; there seems to be a blanket of silence over the issue, even at the school board level.

C. Results

1. Extent of the constraint. Table II-1 and Appendices F and G show the extent of tenure protection for one or more categories of administrative personnel. Clearly, if administrative tenure is a problem, it exists on a widespread basis.

Obviously, it makes an important difference whether all or only some limited categories of administrative personnel are eligible for tenure. As is evident from Table II-1, there are significant differences in tenure coverage: At one extreme, there are states such as South Dakota which provide tenure protection for all certified school employees, including superintendents. At the other extreme, only the lowest echelons of administration are accorded tenure by state law. However, it should be noted that even within a given state, the statutes may provide tenure for higher echelons without necessarily providing it for all the lower ones. This is illustrated by the situation in New Jersey, where superintendents can acquire tenure but department chairmen cannot. The reason is that administrators can acquire tenure in New Jersey only in positions for which certification is required. Inasmuch as the position of "chairman" is not recognized under the New Jersey law, persons assigned to such positions do not and cannot acquire tenure therein; inasmuch as "superintendent" is an administrative

TABLE II-1

Summary of State Legislation on Administrative Tenure

1. States granting tenure to some or all administrative personnel in their administrative positions: Alabama, District of Columbia, Florida, Hawaii, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Pennsylvania, South Dakota, Virginia, and Washington.
2. States authorizing tenure in all administrative classifications: Hawaii, Michigan, Minnesota, Nevada, South Dakota, and Washington.
3. States specifically granting tenure to principals: Alabama, Florida, Massachusetts, New Jersey, North Carolina, Oregon, and Virginia.
4. States specifically granting tenure to supervisors: Alabama, Florida, Louisiana, Massachusetts, North Carolina, Oregon, and Virginia.
5. States specifically limiting tenure to administrative personnel below the rank of superintendent: District of Columbia and Kentucky.
6. States specifically limiting tenure to all administrative personnel below the rank of assistant superintendent: Pennsylvania.
7. States granting all or some administrative personnel tenure only as teachers: Alaska, California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, New Jersey, North Dakota, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, West Virginia, Wyoming.

Source: Research Division, Teacher Tenure and Contracts (Washington, D.C.: National Education Association, 1972) and Educational Research Service, Tenure and Contracts for Administrators (Arlington, Va.: Educational Research Service, 1974).

category recognized by New Jersey law, superintendents can acquire tenure. In recent years, teacher organizations in New Jersey have taken the position that department chairmen are "supervisors" in effect and hence eligible for tenure. Assuming that the crucial issues are what the chairmen do, not their title, and assuming further that they are "supervisors" under another label, it would still be true that administrators in New Jersey are eligible for tenure only for those positions specifically mentioned in New Jersey law. Thus positions as "administrative assistant" or "research director" would still appear to be excluded from tenure coverage in New Jersey, even though individuals in higher level positions specifically mentioned in the law were eligible for tenure. It would be interesting to see what would happen if a New Jersey board of education argued that no tenure accrued to individuals who had a position title eligible for coverage, but did not actually carry out the duties normally associated with that position.

In 24 states, at least some administrators can get tenure but only as teachers. In most of these states, a tenured teacher appointed to an administrative position, at least within the same school system, retains his tenure status but only as a teacher. Some states permit districts to award tenure as a teacher to persons serving in an administrative capacity. (5)

In this study, states which authorize administrators to have tenure as teachers are not classified as states with administrative tenure. In other words, the focus of this study was upon tenure, not for administrators but for administrators in administrative positions. As a practical matter, only the lowest echelons of administration are likely to be affected by the fact that administrators have tenure as teachers; i.e., superintendents are much less likely than department chairmen to assert their rights as a tenured teacher. In any case, tenure for administrators as teachers would appear to have only a marginal impact on administrative efficiency generally; even if the over-all impact is positive, which may well be the case, the legal and practical problems involved are much different from those associated with tenure in an administrative capacity.

It should also be emphasized that the extent of administrative tenure is not at all clear from some of the statutes or questionnaire responses. For example, several statutes provide tenure for "supervisors" but it is not clear what positions, regardless of title, are covered thereby. In some states, lawsuits have been devoted to this issue. Indeed, in some states certain positions apparently covered by the statute have been excluded therefrom by court decision. Therefore, the coverage outlined may not be complete, but undoubtedly provides a reasonable accurate national summary.

2. The impact of administrative tenure. What are the costs of administrative tenure in education? More precisely, what is the cost of the inefficiencies due to administrative tenure?

The following differences relating to administrative tenure complicate efforts to answer this question.

a. Differences from state to state in the personnel accorded or eligible for tenure, e.g., superintendents can get tenure in some states but not others; likewise, assistant superintendents, supervisors, and principals are also covered in some states but not others.

For instance, tenure in Minnesota applies to all certified personnel outside the three largest cities, where it applies to principals or any person regularly employed to superintend or supervise classroom instruction. In Michigan, tenure applies to all administrative personnel unless the school specifically states in the employment contract that it does not apply to the individual in an administrative capacity, in which case the individual has tenure as a classroom teacher. In Missouri, tenure applies to all certified personnel except superintendents, assistant superintendents, and other persons regularly performing supervisory functions as their primary duty; however, tenure applies to teachers and principals in St. Louis. In Montana, tenure covers teachers and principals.

b. Even for the same category of personnel, e.g., principals, the nature of tenure protection varies from state to state.

c. The conditions or requirements for tenure vary from state to state, e.g., the number of years of service required varies from 3 to 5 years.

d. The procedures and grounds for dismissing a tenured individual (and presumably the costs of doing so) vary from state.

It should also be noted that some costs associated with tenure are virtually impossible to quantify in a meaningful way. For instance, it can be argued that school boards should have the right to terminate the employment of superintendents apart from considerations of competence or morality. A board may want a different kind of superintendent without alleging that the incumbent is either incompetent or immoral, or has fallen down on the job in some way. It is clearly worth something to boards to be free of tenure barriers in this situation, but we cannot ascribe the costs of these barriers simply as inefficiencies.

It must also be recognized that in some respects, tenure can and does contribute to greater productivity. For example, a board may wish to fire a competent administrator because the latter refuses to employ inefficient teachers who have board support. Certainly, it can be argued that tenure enables some administrators to concentrate on efficient performance instead of cultivating political support in order to keep their jobs. In short, tenure has both productive and unproductive consequences; we cannot simply estimate the inefficiencies and treat them as the costs of tenure. And unfortunately, we have no reliable way of estimating the positive contributions of administrative tenure to productivity, albeit such contributions appear to be far outweighed by the negative consequences, as they are in the private sector.

Over-all, there would appear to be no question that tenure legislation results in the protection of some incompetent administrators. What is much less generally recognized, however, is that administrative tenure often leads to inefficiencies with respect to competent administrators. School boards which are frequently satisfied with administrative performance may nevertheless be unwilling to make reappointments resulting in tenure for the incumbent. The result is a rapid turnover of administrative personnel. That this is an outcome should not be surprising since teachers frequently have cited the same argument to explain denials of teacher tenure. The rationale would be even stronger in the case of management personnel.

In this connection, it should be noted that in New Jersey, where all administrators are eligible for tenure, the New Jersey School Boards Association has introduced legislation to replace administrative tenure with 3 to 5 year contracts. Paradoxically, the association is emphasizing the high turnover rate among superintendents, rather than the low rate one might expect to result from the protection of incompetent administrators.

Some other consequences of administrative tenure appear to be related to the fact that some states have it and other don't. Thus administrative personnel with tenure are less likely to move from the states and districts where they have tenure to districts where they could not get it under any circumstances. By the same token, the states which offer administrative tenure, especially at the higher ranks, appear to have recruitment advantages over neighboring states which do not offer it.

Although there have been dozens of recent articles and books critical of teacher tenure, very little attention has been paid to administrative tenure. This is itself a significant fact, inasmuch as the harmful effects of administrative tenure are obviously much greater than the effects of teacher tenure. As a matter of fact, the absence of critical attention to administrative tenure appears to explain, at least partially, why criticism of teacher tenure seldom results in concrete action to abolish or restrict it. Administrative personnel, who normally might be expected to oppose teacher tenure are not likely to do so if such action would also jeopardize administrative tenure. As noted above, the entire subject is ignored by organizations of administrative personnel. This is not as surprising as the fact that even the NSBA has no position on the subject, even though some of the state school board organizations have been concerned about the problem. After all, NSBA members have no personal stake in administrative tenure as do the members of the professional organizations of administrators. Of course, like any management organization, NSBA opposes tenure or tenure-type legislation. The crucial point, however, is that the case against administrative tenure is so different and so much stronger than the case against teacher tenure that the two situations can and ought to be sharply distinguished. There is no doubt that failure to distinguish the two categories has facilitated administrative tenure in some states where it might otherwise have been avoided. As a matter of fact, even the authorities and textbooks in educational administration ignore the problem. Here as elsewhere, tenure is identified as a problem of personnel administration, not as a problem of democratic or managerial control over a public service.

The posture of NEA and its state affiliates toward administrative tenure is a complex matter which requires some elaboration. NEA does not have any official policy on administrative tenure, nor is it likely to adopt one in the near future. Over the years, however, its affiliated state associations have been the major interest group striving for statutory improvements in terms and conditions of employment for educational personnel. Prior to the 1960's, these state associations permitted unrestricted administrator membership and most of

them were in fact dominated by school administrators. Indeed, one perceptive study of educational policy-making in three midwestern states concluded that Missouri lacked a teacher tenure law precisely because the Missouri State Teachers Association was dominated by school administrators who were opposed to teacher tenure.⁽⁶⁾

Since the advent of collective bargaining in education in 1962, there has been both a state pull-out and push-out of administrative personnel from the state associations. At the present time, administrator membership is prohibited in some state and local associations, and there are compelling factors stimulating administrators to withdraw or avoid membership in such associations even where it is legally permissible. In many states, the most important factors conducive toward administrator membership are the insurance benefits which are available to state and NEA members; however, the NEA constitution going into effect in 1975 will prohibit membership to anyone who negotiates for school management. This national provision will accelerate the exodus of administrators in many states (mostly Southern) where their membership and influence is still an important consideration.

Most of the tenure laws now on the statute books were enacted when administrators dominated the state associations. For this reason, it is not surprising that these laws often provide some measure of protection for administrators as well as teachers. Frequently, this result is achieved without much visibility by means of a "teacher tenure law" in which "teacher" is defined to include administrative personnel. For example, the Iowa statute declares that "The term 'teacher' as used in this section shall include all certificated school employees, including superintendents." (Iowa Code Annotated. Title 12, section 279.13).

Despite the exodus or non-enrollment of administrators, it appears that the state associations, even those restricting administrator membership, continue to support tenure for school administrators. The main reason is that teacher organizations see the middle management positions as promotional positions for their own members, and they are reluctant to weaken job security for positions to which their members aspire. In addition, most teachers and teacher organizations still do not regard administrative positions, e.g., the principalship, as managerial ones. These attitudes are affected by a wide variety of factors, such as the role of principals in grievance procedures, and by state laws providing bargaining rights for teachers. Thus, although teacher associations would no longer sponsor tenure for top managerial positions, they appear to accept it and are not likely to take or support any initiative to eliminate it for middle

management. At least, this study failed to turn up a single instance of state association opposition to administrative tenure.

It would be unrealistic to expect AASA, NASSP, NAESP, ASCD, or any administrative organizations to oppose administrative tenure. All have members protected by state tenure lawyers. As will be elaborated in Chapter V, the vast majority of these members are unaware of the possibility that they may lose their tenure rights under proposed federal public employee collective bargaining legislation. This unawareness underlies their apathy toward the proposed federal legislation, which may well lead to a tremendous upheaval in the administrative ranks.

In the near future at least, it is also doubtful whether either NEA or AFT will oppose administrative tenure, even in states where the lines between management and employees are clearly drawn as a result of collective bargaining. A significant number of teachers in most districts usually seek administrative position. The teacher unions, therefore, have two reasons not to oppose administrative tenure. First, they would be perceived as undermining an objective of some of their constituents. Secondly, administrative personnel are typically in a position to help or hinder organizational objectives. In most districts, teacher union opposition to administrative tenure would generate administrative antagonism on more important organizational issues.

It is also evident that administrative tenure is conducive to inbreeding. Consider the case of a New Jersey assistant superintendent with tenure who is offered superintendencies in his New Jersey district and Pennsylvania. In his own district, the individual maintains tenure as an assistant superintendent even if he is removed as superintendent within a two year period. After that, the individual would receive tenure as a superintendent. In contrast, there is no tenure in the Pennsylvania superintendency. Thus even if it were a better position except for job security, the latter consideration is frequently dominant. A position which offers job security has a significantly greater attraction than one which does not. Add to this the advantage of having job security, and it is easy to understand the tendency of tenure to limit administrative mobility.

3. Interest group positions on administrative tenure.

American Association of School Administrators (AASA):

No official policy on teacher or administrative tenure.

American Federation of Teachers (AFT):

Supports both legislated tenure and contractual provisions providing for job security.

Association for Supervision and Curriculum Development (ASCD):

No official policy on teacher or administrative tenure.

National Association of Elementary School Principals (NAESP):

No official policy on teacher or administrative tenure.

National Association of Secondary School Principals (NASSP):

No official policy on teacher or administrative tenure.

National Education Association (NEA):

Supports both legislative and contractual tenure. It has not in the past clearly distinguished teacher from administrative tenure and is not likely to do so in the near future.

National School Boards Association (NSBA):

Opposes tenure for both teachers and administrators. In the past, it has not distinguished tenure for the two groups, but is likely to do so in the future.

D. Conclusions and recommendations

In the opinion of the chief investigator, the extent of administrative tenure, its substantial costs, and its pervasive neglect in professional circles, especially in the universities, are very significant *prima facie*. Why should a matter of such significance receive such little professional or research attention, especially when teacher tenure appears to be coming under increasing criticism? The following observations are not based upon hard empirical data, but they are nevertheless made as an informal guess about some otherwise inexplicable facts.

1. Administrative personnel cannot be counted upon to modify teacher tenure in states where such action would call attention to, and weaken the arguments for, administrative tenure. Another way of stating the matter is that a great deal of rhetoric about teacher tenure is just that - those who assert its undesirability do not have the slightest intention of doing anything about it.

2. Collectively, university professors of educational administration tend to identify with and support school administrators. Research and criticism tends to be focused upon matters which are not threatening to the administrators. Undoubtedly, many professors believe that they would weaken their support and acceptability among practicing school administrators by criticizing administrative job security.

3. The prevalence of administrative tenure is not widely understood. Widespread avoidance of the issue has tended to leave the impression there is no problem.

4. The inefficiencies resulting from administrative tenure, at least above the principal level are significant and justify legislative action where such tenure exists. The absence of a formula for assessing the inefficiencies and the practical impossibility of making state by state estimates do not justify the status quo.

5. The laws according administrators tenure underscore the importance of treating administrative separately from teachers in legislation designed to benefit the latter. Teacher tenure is sometimes enacted without administrative tenure. It is very unlikely, however, that administrative tenure would ever be enacted in the absence of, or apart from, teacher tenure. This explains why administrative tenure is found piggybacked onto teacher tenure, and why there is so little opposition to teacher tenure from administrative personnel.

The crucial point here is the need to eliminate or at least reduce conflicts of interest among administrative personnel. The basic conflict is between what the adminis-

trator should do to carry out his administrative responsibilities, and what course of action will be of most personal benefit. This conflict can arise in either a legislative or bargaining context. Thus with respect to tenure legislation, administrative organizations are caught between their responsibilities as management representatives which presumably justify opposition to tenure for administrators - and the welfare of their members, which clearly calls for support of administrative tenure. The same kind of conflict can arise at the bargaining table, where administrators representing management are confronted by teacher demands for more insurance benefits or sick or personal leave. If, as often happens, any benefits granted to teachers are automatically granted to administrators, the latter are in a conflict of interest situation. Thus apart from the merits of administrative tenure, it emphasizes the need for states to separate administrators from teachers in any employee benefit legislation.

6. The relationships between administrative tenure and productivity, important as they are, should not be the sole determining factors in whether or not to have administrative tenure. In the view adopted here, the strongest argument against administrative tenure is one that is rarely made. School boards are supposed to represent the public. Superintendents serve as the representative of these boards. Similarly, associate and assistant superintendents and principals are supposed to represent and carry out board policies. If boards cannot choose their key representatives and managers, it is difficult to see how they can make and carry out their policy-making and policy-implementing function. Indeed, the basic issue here is not whether the school boards can control their representatives. It is whether the school boards can control their representatives. It is whether the electorate can control public affairs when the persons elected to direct public affairs cannot choose key managerial and policy-making subordinates.

In this context, the competence of the subordinates is not the issue. Individuals have the right to choose and change their lawyers, regardless of their competence. If lawyers could not be replaced at the discretion of the clients, the latter would hardly be able to control their affairs. By the same token to the extent that policy makers chosen by the electorate cannot select their representatives, control of public affairs by the electorate is jeopardized.

Just how far down the administrative structure should there be control by elected officials? This is obviously a controversial matter. A school board which cannot choose superintendents, associate superintendents, and assistant superintendents is more handicapped than boards which cannot

choose principals and department chairmen. Whatever may be the appropriate point, if any, to remove administrative personnel from appointment by elected officials, it is difficult to reconcile democratic control with tenure for top echelon administrators. In some quarters, tenure for administrative personnel is defended on grounds of efficiency; i.e., it is necessary to insulate administrative appointments from each crop of elected officials in order to maximize their efficiency. Our analysis rejects this argument, although it may be conceded to have more merit vis-a-vis the lowest echelons of administration. The fact that this extension of responsibility and authority does not and need not extend to freedom to remove the teaching staff in toto will be a hangup only to doctrinaire ideologies. Others may be as firmly committed to substantial control by public management over middle management as they are to the view that it is unnecessary and undesirable to remove tenure protections from everyone. The irony is that in some states, educational managers and policy makers are not subject to the political process but persons holding non policy-making and non-managerial positions are without any tenure or tenure type protection. It is, e.g., impossible to justify the situation in New Jersey, where superintendents have tenure but custodians to not.

7. Removal or reduction of administrative tenure should be accompanied or preceded by substantial increases in direct compensation, to compensate for the loss of job security. It would be unfair to remove such security without a corresponding increase in direct compensation. School board-administrator relationships should be governed by contracts between the parties and not by statute but it would be naive to think that the elimination or reduction of administrative tenure does not call for some difficult and painful readjustments on the board as well as the administrative side.

Footnotes to Chapter II

1. See Derek C. Bok and John T. Dunlop, Labor and the American Community. (New York: Simon and Schuster, 1970), p.268.
2. The definition and discussion follow closely the definition and analysis in Research Division, Teacher Tenure and Contracts. (Washington, D.C.: National Education Association, 1972) p. 5.
3. Shortly after the original completion date of this study the Educational Research Service published a major national survey of administrative tenure: Educational Research Service, Administrative Contracts and Tenure (Arlington, Va.: Educational Research Service, Inc. 1974). The ERS study and Teacher Tenure and Contracts (supra) provide a convenient paraphrase and summary of state legislation on administrative tenure for anyone interested in the subject. Both publications are incorporated by reference in this report, since they are too large to be included physically.
4. Final Report of the Ad Hoc Committee to Study Tenure and Certification. (Trenton, N.J.: New Jersey School Boards Association, 1970), p. vi.
5. The states which authorize administrators to achieve or retain tenure as teachers are California, Delaware, Rhode Island, Tennessee, and Texas.
6. See Nicholas A. Masters, Robert H. Salisbury, and Thomas H. Eliot, State Politics and the Public Schools. (New York: Alfred A. Knopf, 1964).

III. Sabbatical leave

A. Introduction: Statement of the problem

The selection of terms and conditions of employment for analysis posed several problems. It was deemed desirable to select items which had been broadly enacted and offered some promise of revealing major inefficiencies. Statutory sabbatical leave appeared to meet these criteria on the basis of information which led to the original proposal.

In addition, there was another factor which suggested the desirability of its inclusion in this study. This is the movement to institute sabbatical leaves in the private sector. In the United States, this movement had been relatively quiescent until recent years, but it appears to be gaining momentum for a variety of reasons. One is the growing awareness about sabbaticals in the private sector. Another is the advocacy of private sector sabbaticals by institutions of higher education, many of which are urgently seeking new markets as a result of a decline in student enrollments. For the same reason, college faculties have begun to express an interest in the educational opportunities offered working adults in the private sector. A number of corporations are already providing sabbaticals as a fringe benefit and the number is expected to increase in the near future. In addition, the increasing interaction of public and private sector unions, leading to greater mutual awareness of the benefits achieved in each sector and greater incentive to strive for benefits traditionally regarded as peculiar to certain fields or industries, was a contributing factor. There is clearly greater interest in the concept of training for career improvement or even career change at age 35-55, and this also contributes to greater interest in sabbatical leave. It should be noted that France has already adopted a policy and provided financing for private sector sabbaticals. All things considered, therefore, it was thought that consideration of this item might be useful in other fields as well as in education.

B. Procedures

The state education codes were examined for items pertaining to sabbatical leave. A review of the literature revealed very little relating productivity improvements to state mandated sabbaticals. As a result, the study emphasized evaluation of sabbatical procedures under the statutes from a productivity standpoint. Since Louisiana was one of the two states to mandate sabbaticals, evidence concerning sabbatical costs and benefits in the largest district (New Orleans) was included. The procedures included review of budgetary records and analyses relating to sabbatical leave and discussions with the superintendent of schools.

An effort was also made to compare the frequency and usefulness of sabbaticals mandated by statute in New York City with those granted pursuant to board discretion.

C. Results

1. Extent of the constraint. Appendix A sets forth the specific statutes analyzed in this chapter. Table III-1 shows that 28 states have enacted legislation dealing specifically with sabbatical leave. For the most part, the statutes reveal wide variations on some matters as well as similar patterns on others. Sixteen states leave the required period of pre-sabbatical service to board discretion; in the other 12 states, the range is from six semesters in Louisiana to 10 years in Pennsylvania. This is a surprising result inasmuch as these are the 2 states in which local boards must grant sabbatical leave provided the statutory conditions are met. The required period of service after sabbatical leave is also left to board discretion in 13 states. In others, the period varies from one term to 3 years, including 3 states where the required service is twice the duration of the sabbatical and one where it is equal to the sabbatical period.

Duration of sabbatical leave is left to board discretion in 9 states; in others, the range is from 4 months (or one semester) to one year. Compensation to teachers on sabbatical leave is left to board discretion in 12 states. In most of the other states, local boards can or must pay half salary for a full year, full salary for 1/2 year, or full salary less the cost of a replacement or substitute.

It was not possible to compare in detail the incidence of sabbaticals in states with and without explicit statutory authorization. Clearly, however, in some states, such as New York, sabbaticals are at least as frequent as they are in many states without explicit statutory authorization. The wealth of a state, the presence or absence of a state public employee bargaining law, and the size of the school district are probably more influential factors than a permissive statute. This conclusion is reinforced by the probability that sabbatical legislation was enacted in states where boards refused to grant sabbaticals in the absence of explicit authorization. Significantly, a recent NEA study showed that whereas only 32.4 percent of 389 comprehensive negotiated agreements in 1966-67 included references to sabbatical leave, 920 of 1,529 such agreements (60.2 percent) negotiated in 1970-71 did so.(1)

More recent studies also confirm the availability of sabbaticals regardless of explicit statutory authorization. Appendix B shows the results of a 1973 study of sabbatical leave benefits in districts with 6,000 or over pupil enrollments. The study does not indicate the proportion of teachers taking sabbatical leave or the conditions of eligibility and return to service, but it does show widespread acceptance of the concept. Similarly, a 1974 study of sabbatical leave in the nation's 25 largest districts (Appendix C) revealed almost complete acceptance of some type of sabbatical for classroom teachers. Finally, a comprehensive 1974 study (Appendix D) shows that sabbatical leave for administrators and supervisors closely parallels its availability for classroom teachers.

TABLE III-1

State Legislation on Sabbatical Leave*

	Mandatory Optional	Required Years Service Before Sabbatical	Required Years Service After Sabbatical	Duration of Sabbatical	Sabbatical Salary
Alabama	BD	BD	BD	BD	BD
Alaska	BD	7	1 yr.	not more than 1 yr.	up to 1/2 local BD local district
Arizona	BD	7	1 yr.	not more than 1 yr.	up to 1/2 regular salary
Calif.	BD	7	2 x duration of leave	1 to yr.	up to full not less than salary less subst.
Delaware	BD	BD	1 yr.	1/2 to 1 yr.	1,000 1/2 2,000 year
Florida	BD	3	BD	1 yr.	BD
Hawaii	BD	7	2	6 mos. or 1 yr.	1/2 salary
Illinois	BD	6	1 yr.	4 mos. to 1 yr.	salary less subst. but not less than state min. salary
Indiana	BD	BD	duration of sabbatical	not more than 1 yr.	BD up to regular salary
Kentucky	BD	BD	BD	BD	none
La.	M	3	NA	1/2 to 1 yr.	50% of min. or salary less subst.
Maine	BD	7	2 x duration of leave	not over 1 yr.	up to full pay
Mass.	BD	BD	2 x duration of leave	not over 1 yr.	BD
Mich.	BD	7	BD	1 yr.	BD
Minn.	BD	BD	BD	BD	BD

TABLE III-1 (continued)

State Legislation on Sabbatical Leave*

	Mandatory Optional	Required Years Service Before Sabbatical	Required Years Service After Sabbatical	Duration of Sabbatical	Sabbatical Salary
Mississippi	BD	BD	BD	BD	BD
Missouri	BD	BD	BD	BD	BD
Nebraska	BD	BD	BD	BD	BD
Nevada	BD	BD	BD	BD	BD
New Jersey	BD	BD	BD	BD	BD
New Mexico	BD	6	2	1 yr. max.	up to 1/2 reg. salary
New York	BD	5	0	1 yr.	full - see (C)
Ohio	BD	5	1 (a)	1 yr.	diff. between teacher & subst.
Pa.	M	10	1 school term	1/2 yr. or 1 yr.	1,500 half yr. 3,000 full yr.
Tenn.	BD	BD	BD	BD	BD
Texas	BD	5	BD	1 yr. max.	full, 1/2 yr. 1/2, full yr.
Washington	BD	BD	BD	BD	BD
W. Va. (b)	BD	6	3	1 semester or 1 yr.	1 semester at full full yr. at half

BD - Board discretion

(a) Unless teacher has 25 years service

(b) Higher education only

(c) For teaching in a foreign country or institution of higher education.
Regular authority to grant sabbaticals interpreted as an implied
power of local boards.

*Source: Appendix A lists the statutes. The District of Columbia
grants sabbaticals but is not included because the legal
analysis would not be applicable to it.

2. Impact of the constraint

Inasmuch as only two states mandate sabbatical leave, it cannot be argued that the statutory constraints present a serious national problem, at least in terms of educational productivity. The legislation does, however, constitute a dramatic example of an inefficiency in Louisiana, one of the two states which mandated sabbaticals. Some discussion of the situation in that state may be helpful, since the situation there raises some serious questions about sabbaticals under local board discretion. (2)

The Louisiana law mandates sabbatical leave either "for the purpose of professional or cultural improvement" or "for the purpose of rest and recuperation." Aside from the relatively easy procedural requirements to establish eligibility, "five per centum of the total number of teachers employed" may be granted sabbaticals - except in cases of sick leave, which is not "rest and recuperation" leave under the Louisiana statute.

For "rest and recuperation," an applicant need only provide statements from two physicians that "the health of the applicant is such that the granting of such leave would be proper and justifiable." This appears to be no problem, especially inasmuch as the teachers are entitled to leave for either "rest and recuperation" or "professional or cultural improvement." Even ignoring the "rest and recuperation" option, one of the statutory alternatives in taking leave for "professional or cultural improvement" is merely to "(3) engage in travel which is so planned as to be of definite educational value." Two reports concerning the leave must be submitted. One consists of a report of "approximately one hundred words" after leave has commenced. The other to be submitted within 30 days after the end of such leave is a report of "approximately two hundred and fifty words, of the manner in which such leave has been spent." Other sections of the statute protect the sabbatarian's right to regular salary increments, credit toward retirement for time on sabbatical, and right to return to the same position and to all other "rights and privileges pertaining to his position and employment."

The statute appears to have an enormous productivity impact. First, a substantial number of eligible staff take advantage of their statutory rights to sabbaticals. Table III-2 provides a recent summary of sabbatical leave taken in the New Orleans Parish under the Louisiana statute. It shows that in 1971-72, 74 of 148 employees on sabbatical leave in January 1972 did not return to work following their sabbatical. In fact, 48 or more than one-third, retired or resigned after their sabbatical leave, so the district re-

TABLE III-2

Sabbatical Leave Analysis
New Orleans Parish, 1971-72

	<u>Employees</u>		<u>Salaries</u>	
	No.	%	\$	%
No. of Employees on January Leave Payroll	148			
Retired Employees	42	28	318,360	36
Resigned Employees	8	6	35,202	4
On Leave Without Pay After Paid Leave	11	7	55,950	6
On Paid Sick Leave in Following Year	8	6	60,420	7
On Sabbatical Leave in Following Year	5	3	27,109	3
Total Inactivated	74	50	497,041	56
Returned to Active Duty	74	50	389,458	44
Deceased.	-	-	-	-
No. of Employee Transactions	148	100%	886,499	100%

Note: Data courtesy of New Orleans Parish Schools. The data was secured by analyzing the employment status of employees who were on sabbatical leave as of January 1972, thus "Retired Employees" means the number of employees on the January leave payroll who retired upon the expiration of sabbatical leave. As indicated, half the teachers on sabbatical leave in January 1974 were on inactive status the following year.

ceived no benefits whatever from their leave. It is also noteworthy that some employees went on paid sick leave after their paid sabbatical leave; in fact, some of these employees retired or resigned after two consecutive years of paid leave.

The fact that the statute is not only mandatory but actually prevents effective monitoring by the administration is reflected in the nature of the applications for leave. Requests for "rest and recuperation" often have no stated medical basis for the leave. Leave for educational travel was very loosely controlled; in fact, the administration's records showed that in the past one applicant had submitted a travel brochure as the report required by the statute. Although the present administration is trying vigorously to curtail sabbatical abuse, its difficulties flow largely from the extremely loose statutory guidelines which are beyond its control.

The dollar costs of sabbaticals to the New Orleans district in 1971-72 were \$886,499. Although state-wide data is not available, there appears to be no reason to believe the pattern is different elsewhere in the state as a whole. Extrapolating to the state as a whole, the direct costs would be approximately \$9 million annually. This does not include the additional administrative costs in processing leave, in the discontinuities in the school program resulting from such excessive leave, and the costs of recruiting and orienting replacements for employees going on sabbatical.

How much of these estimated costs should be regarded as statutory inefficiencies? As previously noted, sabbaticals are often granted even in the absence of a statute. Even so, the statutory inefficiencies on a state-wide basis probably exceed \$6 million annually. First, the direct costs of those who do not return to a district are around \$5 million annually. Obviously, there can be no benefit to the system in these cases. The indirect costs associated with processing these sabbaticals and recruiting their replacements must also be very substantial. Whatever gains may accrue, such as the greater attractiveness of teaching in Louisiana, would seem to be more than negated by other sabbatical costs, such as the greater retirement costs associated with unproductive sabbaticals.

3. Interest group policies related to sabbatical leave. The NEA is the only major K-12 educational interest group with policies relating to sabbatical leave per se. As shown in Appendix E, these policies emphasize teacher welfare, not teacher productivity.

D. Conclusions and Recommendations

Although some productivity gains can result from sabbatical leave, mandatory sabbaticals without adequate safeguards must be regarded as a waste of tax dollars and an infringement upon local school board autonomy as well. Obviously, the elimination or diminution of such an important fringe benefit would generate intense opposition among the teaching staff. Perhaps the only way to proceed would be to grandfather in the rights of existing staff and tighten the controls as much as possible within the statutory guidelines. Even if this were done, the outcomes under statutory sabbaticals may not differ widely from sabbatical leave outcomes under contractual procedures. A recent study of sabbatical leave in New York City provides some evidence for this conclusion.⁽³⁾ The study estimated that the New York City Board of Education paid more than \$28 million for sabbatical leaves for teachers who retired after their sabbatical or within one year thereof. Table III-3 shows that 44 percent of a sample of 166 New York City teachers retired within a year after their sabbatical leave.

Table III-3

Work Status After Sabbatical Leave

New York City Board of Education, 1967-72

<u>Status</u>	<u>Number</u>	<u>Percent</u>
No. of teachers in sample	166	100
Resigned after sabbatical	45	27
Resigned 1-3 mos. after sabbatical	7	4
Resigned 3-5 mos. after sabbatical	16	10
Resigned within 12 months	5	3
Resigned within one year after sabbatical, total	73	44

Source: Report No. NYC 11-73, Report on Sabbatical Leave Practices, New York City Board of Education (Albany, N.Y.: Office of the State Comptroller, 1973).

Clearly, the inefficiencies under the collective bargaining contract in New York City are comparable to those under the Louisiana statute.

In the opinion of the principal investigator, sabbatical leave should be regarded as merely one possible case of in-service education for management purposes.

The circumstances under which there is increased productivity from additional training vary a great deal. There may be new developments in a field of study or in its pedagogical techniques. A district may wish to introduce new programs and find it advantageous to have staff observe operations in other districts. The variety of factors involved strongly suggest that decisions on sabbatical leave should be made locally. States should authorize sabbatical leave so as to remove any doubt as to its legality, but go no further. In fact, it would be desirable to authorize districts to pay for training at their discretion, and simply ignore the conventional concept of sabbaticals. The latter are employee benefits and should be treated as such. It may be that everyone, regardless of age, experience, position, teaching field, or future plans, can benefit from a sabbatical but it is absurd to believe a school district benefits as much as it pays when it ignores these factors. Districts should have the legal right to pay employees for participating in advanced study or training, whether for a few days or for a year. If the use of such authorization is monitored carefully by a state agency, there may be no need for further regulation of the matter.

If a state wished to authorize sabbaticals but provide some safeguards to minimize local abuse, the following are suggested:

1. Sabbaticals should not be available to individuals who are or will be eligible for retirement within a specified number of years after return from sabbatical. Three to five years would not be unreasonable from a productivity standpoint, since it is very unlikely that a district could recoup its investment in a shorter period of time.
2. The conditions under which sabbaticals are granted should be more explicit concerning the benefits to the district.
3. As a matter of policy, the continued use of weak educational criteria for granting sabbaticals should be discontinued. Such use is conducive to evasion and hypocrisy by all parties. It might be better to treat the sabbatical as an employee benefit without restriction as to what is done or how much is made by the employee on the sabbatical. Or there could be two or more types of sabbaticals, with different criteria involved. One would be an employee benefit, largely automatic, but subject to longer service and return requirements. Sabbaticals initiated by districts should be subject to fewer restrictions by the state, unless it appears that school employers are initiating sabbaticals for reasons unrelated to the improvement of education.

4. The economics of sabbaticals call for some critical analysis, especially by school management. As matters stand, teachers frequently do not pursue advanced studies during the summer or while teaching on full salary. This suggests that the opportunity costs of advanced study are greater than the benefits, i.e., school districts do not pay enough to induce teachers to take advanced work if the teacher has to bear the costs. It would seem, therefore, that there is even less justification for advanced training when the school district bears the opportunity cost. What both the statutes and contractual provisions on sabbatical leave show is the need for a school management approach to in-service education that realistically reflects both direct and opportunity costs on the one hand, and increased productivity on the other. Until this happens, sabbaticals are likely to continue as primarily an employee benefit with only fortuitous contributions to teacher productivity.

5. Finally, state mandated sabbaticals must be seen as yet another instance of the states mandating costs which must be met by local government. As will be evident in succeeding chapters, this type of situation is a pervasive cause of inefficiency at the local level.

Footnotes to Chapter III

1. Research Division, "Sabbatical Leave for Teachers," NEA Research Bulletin, March 1972, pp. 22-27.

2. The data for the New Orleans Parish School District was provided by its superintendent and administrative staff.

3. Report No. NYC 11-73, Report on Sabbatical Leave Practices, New York City Board of Education (Albany, N.Y.: Office of the State Comptroller, 1973).

IV. State Legislation on Terms and Conditions of Employment

The purpose of this section is to assess the impact of statutory terms and conditions of employment upon educational productivity. The rationale for this section is related partly to the two preceding chapters and also to proposed federal public employee collective bargaining legislation to be discussed in Chapter V. The two previous chapters attempted to take two specific constraints and assess their effects throughout the states. Although these efforts resulted in useful data, the desirability of a much broader survey to indicate what, if any, *prima facie* instances of mandated inefficiency could be gleaned from the statutes quickly became apparent. This chapter is a response to that need.

A. Statement of the problem

Prior to the 1960's, most teacher efforts to improve terms and conditions of employment for teachers emphasized state legislation. If teachers wanted higher salaries, they tried to enact a higher state minimum salary law. If they wanted a duty free lunch period, they sought a "right-to-eat" law, and so on.

This approach was due largely to the structure of the state education associations affiliated with the NEA. These state associations typically included administrators, including superintendents, as well as teachers. Educational administrators could hardly encourage teachers to join local associations which supported militant action against the administrators. In fact, prior to the 1960's, local associations had virtually no full-time staff and only nominal dues. The program of "all-inclusive" associations inevitably stressed state legislation, since such legislation frequently served the individual and professional interests of both teachers and administrators. For example, both groups could support an increase in state aid to education. Both groups could support improvements in teacher retirement systems, since educational administrators participated in these systems as beneficiaries as did the teachers.

Other terms and conditions of employment presented problems, even at the state level. Teachers frequently sought state tenure laws which were opposed by administrator members of the state associations. Where tenure was achieved, it frequently covered administrators as well as teachers, as was shown in some detail in Chapter II. Similarly, other possible benefits, such as a duty free lunch period or legal prohibitions against assignment out of license, frequently led to a division among teacher and administrator members. Nevertheless, there is no question that teacher organizations generally emphasized state legislation to advance teacher welfare, especially in the period 1920-1960.

Since preliminary observation suggested that some of this legislation was a constraint upon educational productivity, an original purpose of this study was to investigate the full productivity impact of state legislation on educational personnel. As originally envisaged, the study would have estimated the dollar amounts of the inefficiencies resulting from state legislation. As the study progressed, however, the need to modify the original objectives became apparent.

First, it became evident that there is so much legislative variation from state to state, even on the same item such as tenure or retirement, that dollar estimates of the national picture were out of the question. This is not to deny the possibility, and even the desirability of estimates for specific statutes in specific states; in fact, one recommendation of this study is that such studies be made. The point here, however, is that it was manifestly impossible to make defensible estimates of the inefficiencies created by hundreds if not thousands of state statutes.

Secondly, it also became evident that specific national estimates were not crucial to the value or usefulness of this study. If the study points to significant inefficiencies, as is believed to be the case, there is no need to try to pinpoint the exact amounts involved. Of course, whether an inefficiency is "significant," or whether it is only an alleged instead of a real inefficiency, depends upon an estimate of its real impact. Once a possibility for productivity improvement is above a threshold level, however, differences over the possible savings would not affect agreement on the need for action.

In the third place, the art and science of productivity measurement in the public service sector generally, and the field of education specifically, turned out to be too primitive to carry the burden of specific dollar estimates. Different observers can agree that a diet is inadequate and must be improved, even while they disagree on whether the inadequate diet shortens life by 20 years, 15 or 10. As just noted, educational observers can agree that certain statutes are conducive to inefficiencies which should be eliminated, even while they disagree on the precise losses involved. (1)

A fourth consideration led to a major reorientation of the study. As the study progressed, it became evident that pending federal legislation could have an enormous but widely unrecognized impact on the major issues of this study. The specific reference here is to recently introduced federal public employee bargaining legislation and its potential impact on state statutes pertaining to terms and conditions of teacher employment. The possible relationships between such proposed federal legislation and the state legislation

on terms and conditions of employment generally could not be ignored if the study was to achieve maximum usefulness. Because these relationships have been widely overlooked in the Congressional hearings and professional literature on federal public employee bargaining legislation, this study became in part an effort to explain how and why such federal legislation could effect educational productivity and what should be done about it. Although this explanation will be found in Chapter V, the present chapter is indispensable to a full understanding of it.

B. Procedures

The procedures basically involved a search for summaries of state legislation on terms and conditions of employment and any literature pertaining to its productivity impact. There were extended discussions with school board members, administrators, teacher organization leaders, and leaders of professional and school board organizations on the actual impact of some of the statutes, especially those relating to collective bargaining.

Initially, the principal investigator sought to identify and summarize the relevant legislation by visual examination of the state education codes and by a questionnaire sent to state education associations. The torrent of material, especially in some states, the absence of any response from others, and the vast differences in what the states included under identical headings, and the substantive differences between statutes with the same title, e.g., "tenure", rendered this an impossible task. For this reason, emphasis was placed on summaries of specific items. The state summary published by NCCRUL became available only a short time before this study was completed. Summaries by the Education Commission of the States, Educational Research Service, and the National Education Association on various items were also used as appropriate.

The efforts to locate useful studies of the productivity impact of these statutes was singularly unrewarding; in fact, the absence of usable feedback about them is an important conclusion to be discussed later in this chapter. Judgments about the productivity impact were based largely upon inferences to be drawn from the statutes in the light of educational research on the matters dealt with in the statutes. Although this was an obviously unsatisfactory procedure from several standpoints, it is probably less so when the enormous differences between the statutes are considered. That is, an analysis of the statutes demonstrates a strong *prima facie* case to the effect that they generate significant inefficiencies.

1. Extent of state constraints relating to terms and conditions of educational employment, or public employment generally. In dealing with administrative tenure and sabbatical leaves, an effort was made to evaluate the effects of a specific constraint in all the states. In this section, a different approach is used. The effort here is to set forth the over-all picture of state statutes on terms and conditions of educational employment. In general, the items selected are those normally regarded as mandatory subjects of bargaining; however, not all such terms and conditions of employment are summarized herein.

In view of the potential impact of federal legislation on state mandated terms and conditions of public employment, and hence upon educational productivity, it would be highly desirable to have a complete picture of the state statutes involved. It was not possible to develop any such list within the scope of this study. What follows is a summary based largely upon the education codes of the states. Such a summary, necessarily omits a great deal of state legislation outside of the education code that is potentially subject to preemption by the proposed federal legislation. For example, a state statute making a certain day a state holiday on which state and local government employees are exempt from work would be preempted, since such holidays are subject to bargaining. A state law providing for veterans preference or veterans benefits in public employment would be additional examples. For the most part, however, the only legislation outside of the educational codes to be summarized or even noted is legislation dealing with the procedures for resolving employment disputes. Clearly, collective bargaining legislation is the most important category of this kind to be included.

In some cases, it was possible to present a rather complete national summary of a particular legal constraint. This was possible where the constraint had been summarized by a special interest group, such as the NEA. The section also draws partly upon the Lawyers Committee for Civil Rights Under Law, A Study of State Legal Standards For the Provision of Public Education (Washington, D.C.: Lawyers Committee For Civil Rights Under Law, October, 1974). This study (hereinafter referred to as "LCCRUL" with an appropriate page citation) does not include all the terms and conditions of employment found in the education codes. It does, however, summarize state legislation on several matters which are normally regarded as mandatory subjects of bargaining and/or also have major implications for educational productivity. The LCCRUL study also included state requirements promulgated by a state board or state department of education, or by a chief state school officer.

The results of the LCCRUL study combined with the statutory analyses of the principal investigator and available publications on specific terms and conditions of public employment provide useful albeit somewhat incomplete insights into the state mandated terms and conditions of teacher employment. As will be argued subsequently, this picture, limited as it may be, forcefully suggests significant possibilities for increasing educational productivity. It also raises major issues in federal-state relations to be analyzed in the following chapter.

The order in which items appear has a limited significance. The constraints on terms and conditions of educational employment are listed first, but no effort was made to rank them in importance and no such inference should be drawn from their order. State legal mandates dealing with employee organizations and procedures for dispute resolution are listed at the end (items r-v). Obviously, many of these items are not to be found in the education codes; in fact, some cut across virtually all state and local public employment, or, as in the case of compulsory arbitration, are applicable only to non-educational public employment. Such statutes are listed here because some of the issues emerging from this study apply to state and local public employment generally, not simply to public education. On the other hand, items which are purely procedural on their face may nevertheless have a significant impact on productivity. Collective bargaining itself is an example of such an item. Directly, it is not an impediment to educational productivity; indirectly, it may become such. Whether or not supervisors have bargaining rights is another procedural issue that has significant implications for productivity, but it is not feasible to quantify them, at least in this study.

a. Tenure and job security

(1) Tenure. Most civil service employees and teachers earn tenure after serving a probationary period. As tenured employees, they enjoy a high degree of job security. New York Civil Service Law #75 and #76 are typical of tenure statutes. Section 75 provides that no permanent employee in the competitive class of the state or municipal civil service shall be removed or otherwise subjected to any disciplinary penalty "except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section." Section 76 provides procedures by which an employee, believing himself aggrieved by his dismissal or some other disciplinary penalty, may appeal to the Civil Service Law. A lower state court has ruled that this argument deprives employees of a constitutionally protected right to judicial review of their discipline (Antinore v. State of New York, 79 Misc. 2d 8 (1974)) and the State has appealed from that decision.

In 38 states and the District of Columbia, some type of teacher tenure law applies to all school districts in the state. In four additional states (Kansas, Nebraska, Oregon, and Wisconsin), legislation provides tenure in one or more of the largest districts, while most districts are not covered. In three states (California, New York, and Texas) tenure is optional or optional in certain districts. Five other states (Georgia, Mississippi, South Carolina, Utah, Vermont) provide for annual or long term contracts but not for tenure, at least on a state-wide basis.

As will be illustrated briefly, this tenure legislation varies enormously on every important dimension of tenure: Who is covered, the length of the probationary period, the causes for dismissal, the procedures for challenging dismissals, and so on. See Research Division, Teacher Tenure and Contracts, A Summary of State Statutes (Washington, D.C.: National Education Association, 1972), for a more detailed summary of the state tenure statutes as of September 30, 1972.

(2) Notice and procedures. New Hampshire law illustrates a legislative approach to tenure which is typical of a number of states. In New Hampshire (REA 189) a teacher who is not to be reappointed for the next school year must be notified by March 15 prior thereto if he has taught one or more years in a school district. Any such teacher who has taught for three or more years in a school district is entitled to a written statement specifying the reason that he is not being reappointed and a hearing before the school board. The hearing must comply with due process standards and the decision of a school board may be appealed to the State Board of Education. An additional hearing may then be held by an ad hoc review board. The review board must consider, either on the record or on the basis of its own hearing, whether the refusal to reappoint was:

- "a. in violation of constitutional or statutory provisions;
- b. in excess of the statutory authority of the agency;
- c. made upon unlawful procedure;
- d. affected by other error of law;
- e. clearly erroneous in view of the reliable, prohibitive and substantial evidence on the whole record; or
- f. arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Over-all, the number of states requiring various elements of due process are as follows:

<u>No. of states</u>	<u>Element of due process</u>
41	Notice of charges required
41	Hearing required
30	Some type of appeal to higher authority prescribed by statute

Source: LCCRUL, p. 69, and Research Division, Teacher Tenure and Contracts, A Summary of State Statutes.

The appellate body in tenure cases also varies widely as follows:

<u>No. of states</u>	<u>Appellate body</u>
17	State court
5	State board of education
2	State tenure commission
2	State department of education
2	Chief state school officer
1	Board of school directors
1	County superintendent

Source: LCCRUL, p. 69, and Research Division, Teacher Tenure and Contracts, A Summary of State Statutes.

(3) Layoff and reemployment. Several states have enacted legislation dealing with layoffs occasioned by the abolition of jobs. Section 2510 of the New York State Education Law is illustrative. It provides for layoff in order of lowest seniority (see also New Jersey Education Law #18A:28-10). For this purpose, seniority is within a given tenure area and according to the courts (Baer v. Nyquist, 40 AD 2d 925 (197)) there are but few tenure areas and they cannot be subdivided by a school district. Consequently a complex system of bumping comes into play in the event of layoff. This system of bumping is unattractive to many school districts and some might seek to get rid of it through negotiations under the National Labor Relations Act.

In the past, laws specifying the order of layoff were involved chiefly in rural districts undergoing consolidation. In the future, they are likely to be invoked more often in urban and suburban districts experiencing a drop in enrollment, relatively little teacher turnover, and pressures to employ more minority teachers.

(4) Duration of probationary status. An important tenure consideration is the time that must be spent by an employee on probationary status. In education, the probationary periods are as follows:

<u>No. of years</u>	<u>No. of states</u>
2	7
3	26
4	1
5	2

Source: LCCRUL, p. 68 and Research Division, Teacher Tenure and Contracts, A Summary of State Statutes.

The above data counts each state only once, although some states have different probationary periods for different size school districts.

b. Retirement. Every state has some type of retirement system. These systems vary in many ways: Age of mandatory and/or optional retirement, employee and employer contributions, retirement and post-retirement benefits, creditable service, whether the system includes other public employees, social security coverage, provisions for vesting, work restrictions after retirement, provisions for members borrowing, and so on. (13)

Just on preliminary analysis, the differences in state retirement laws are extremely numerous and complex. Table IV-1 provides an impressive example of these sweeping interstate differences, by computing the dollar benefits and relative ranking of 50 hypothetical male teachers who supposedly taught continuously for 35 years and retired at age 60 in 1969. Although the figures would be much different today, the existence of enormous inter-state differences would still prevail. They raise, in acute form, an issue which pervades virtually every statutory enactment covered by this study. At one extreme, statutory enactments which add to direct costs are clearly defensible if not justifiable public policies. At the other extreme, statutory benefits are just as clearly an employee benefit, adding to costs with no visible public policy benefits or rationale. In between, there is a gray area. The statutes increase the costs, but it is not clear whether there are any benefits other than to the employees concerned. At what point such enactments become "inefficiencies" is obviously a very controversial matter. As will be discussed subsequently, the productivity implications of these differences could be extremely significant.

c. Salaries and wages. As it is now in effect, the Federal Fair Labor Standards Act preserves states' rights to establish higher minimum wages than those contained in federal law. Under extension of the NLRA to public employment, it is an interesting question which, if any, of the following would survive preemption on the theory that they constitute minimum wage laws.

(1) Minimum salary schedules. As of December 1972, 29 states had enacted some type of minimum annual salary for teachers. Most of these laws are obsolete because economic pressures force school districts to pay more than the state mandated minimum; e.g., the Idaho law enacted in 1959 mandates a minimum salary of \$2,370 annually for a teacher with a bachelor's degree. In a few states, the laws are updated occasionally so that the minimums do affect some districts.

Although the dollar amounts are virtually always outdated soon after enactment, state minimum salary laws nevertheless frequently do have continuing effects. Most of them specify the number of increments required to reach the maximum step on the bachelor's degree schedule. Some of the statutes require increments for teachers with a certain

Table IV-1

Value of Retirement Benefits to Fifty Typical Male Teachers, One from Each State, Who Retired on July 1, 1969, at the Age of 60, After Teaching Continuously for Thirty-Five Years (1934-1969)

	1	2*	3	4	5	6	7	8
Alabama	81.40	\$3,413	52,662	27	51,800	\$4,462	20	
Alaska	129.1	6,806	6,942	3	—	6,942	4	
Arizona	104.1	1,345	1,237	45	1,800	3,037	43	
Arkansas	73.2	2,568	2,363	32	1,800	4,163	26	
California	126.3	7,394	5,031	9	—	5,031	15	
Colorado	96.1	4,605	4,237	12	—	4,237	25	
Connecticut	110.2	6,056	6,056	5	—	6,056	6	
Delaware	108.1	6,000	4,080	15	1,800	5,380	8	
Florida	94.0	5,551	3,775	19	—	3,775	34	
Georgia	95.3	4,556	4,556	10	1,260	5,816	9	
Hawaii	113.5	7,614	7,005	2	1,800	8,805	2	
Idaho	84.9	4,015	4,015	16	1,800	5,815	10	
Illinois	105.6	5,903	4,014	17	—	4,014	30	
Indiana	107.4	3,633	2,470	31	1,800	4,270	23	
Iowa	91.7	1,010	707	47	1,800	2,507	46	
Kansas	88.0	1,387	943	46	1,800	2,743	44	
Kentucky	70.6	4,218	3,543	21	—	3,543	33	
Louisiana	92.4	6,639	4,515	11	—	4,515	19	
(Plan B)	81.0	4,745	5,504	7	—	5,504	12	
Maine	108.2	6,019	4,113	13	1,800	5,913	7	
Maryland	106.3	7,472	5,084	8	—	5,084	14	
Massachusetts	107.4	4,668	3,474	23	1,800	4,974	16	
Michigan	98.9	2,026	2,026	33	1,800	3,826	33	
Minnesota	67.1	2,441	2,246	34	1,500	4,241	24	
Mississippi	89.8	3,649	2,481	30	—	2,481	48	
Missouri	88.6	3,033	2,062	36	1,500	3,592	37	
Montana	81.4	1,038	706	48	1,800	2,506	47	
Nebraska	109.0	7,115	6,846	4	—	6,846	5	
Nevada	97.0	3,016	2,951	37	1,500	3,851	32	
New Hampshire	107.3	6,090	6,000	6	1,800	7,800	3	
New Jersey								
(Class B)								

Source: James F. Day, Teacher Retirement in the United States (North Quincy, Mass.: Christopher Publishing House, 1971), pp. 102-03.

	1	2*	3	4	5	6	7	8
New Mexico	94.3	4,318	2,236	24	1,746	4,682	17	
New York	120.7	7,257	7,257	1	1,800	9,057	1	
North Carolina	80.9	3,266	3,266	22	1,800	5,066	13	
North Dakota	77.2	2,025	1,377	42	1,286	2,673	45	
Ohio	94.7	6,035	4,104	14	—	4,104	27	
Oklahoma	86.7	2,184	1,455	41	1,676	2,141	49	
Oregon	101.8	1,932	1,932	39	1,800	3,732	35	
Pennsylvania	98.9	5,529	3,760	20	1,800	5,560	11	
Rhode Island	96.8	5,671	3,856	18	666	4,522	18	
South Carolina	77.0	3,034	2,063	35	1,800	3,863	31	
South Dakota	70.5	521	353	59	1,800	2,160	50	
Tennessee	81.1	1,926	1,310	44	1,500	3,110	41	
(Class A)								
Texas	86.8	4,223	2,875	25	180	3,055	42	
Utah	94.7	1,506	1,355	43	1,800	3,155	39	
Vermont	84.2	4,034	2,743	26	1,350	4,033	23	
Virginia	92.6	3,693	2,511	29	1,800	4,311	22	
Washington	106.0	3,827	2,602	23	1,800	4,402	21	
West Virginia	82.8	2,777	1,853	40	1,800	3,653	36	
Wisconsin	96.3	2,277	2,277	33	1,800	4,077	29	
(Combined Group)								
Wyoming	92.6	1,000	680	49	1,300	2,180	49	
Median		3,921	2,509					

*The source of the percent values in column 2 is: Committee on Educational Finance, *Financial Status of the Public Schools* (Washington, D.C.: National Education Association, 1967), p. 26. This publication is published by the NEA Committee on Educational Finance (Copyright 1967 by the National Education Association—All Rights Reserved).

- 1—State.
- 2—Percent of Average Instructional Salary of U.S. Average Instructional Salary for 1966-67.
- 3—Beginning Value of State Service Retirement Allowance, 1962.
- 4—Estimated Value of State Service Retirement Allowance 1966.
- 5—State Rank of Estimated Values in Column 4.
- 6—Social Security Values.
- 7—Total Value of Retirement Program, Column 5 Plus 6.
- 8—State Rank of Total Values in Column 7.

number of years of experience, or mandate specific amounts to be paid over the schedule for advanced degrees. Under New Jersey law, a salary increment must be paid for at least a two year period, and it is likely that other requirements subject to bargaining are included in other state statutes.(2)

(2) Prevailing wages. New York State has a prevailing wage statute for laborers, workmen and mechanics employed by the state and municipal governments if they are not allocated to civil service grade (New York State Labor Law #220). Civil service employees in larger school districts in California must be paid wages "at levels at least equal to the prevailing salary or wage for the same quality of service rendered to private employees under similar employment when such prevailing salary or wage can be ascertained..." (California Education Code #13601.5). It is certain that similar provisions exist outside of the education codes in many states.

(3) Miscellaneous. Pursuant to Indiana law (Indiana Statutes #28-4505), a teacher may not have his compensation diminished because a school closes during the school year.

Under California law (California Ed. Code #13506) salaries must be uniform for teachers of various grades. Moreover, the school district may not decrease the annual salary of a person employed by the district in a position requiring certification qualifications for failing to meet any requirement of the district that such person complete additional educational units, course of study, or work in any college or university or any equivalent thereof (California Ed. Code #13511).

(4) Procedures. A recent decision of a lower court in New York State (Campbell v. Lindsay, 78 Misc. 2d 841 (sup.ct., NY Co., 1974)) illuminates the relationship between wage benefits mandated by statute and collective agreements. Notwithstanding the salary scales contained in an agreement between police officers and the City of New York and the availability of arbitration to resolve grievances, police officers who worked out of title were held to be entitled to the benefits of the procedural and substantive provisions of the Administrative Code of the City of New York (#434a-3.0, subdivision d; #434a-15.0). This included the right to a higher salary and to have that right determined by a court.

d. Pupil load - class size for an individual teacher. Almost half (23) of the states have enacted legislation which either limits the teaching load by classes or clock hours, or (2) limits a teacher's total pupil load during an entire school day, or (3) sets minimum or maximum class size in secondary schools, or (4) limits class size in multi-grade classrooms (LCCRUL p. 52-53). Some of these limitations apply only to certain subjects, or apply generally except for specific subjects.(3)

Similarly, the limits on the teacher's maximum pupil load per day range from 150 without qualification in five states (New Hampshire strongly recommends a limit of 125) to 180 in Ohio. Here again, there is a 20 per cent difference in the maximum pupil load permitted. Next to the actual differences in teacher time, the pupil work load is probably the most significant factor in teachers' productivity. Of course, if there were demonstrable differences in pupil achievement as a result of these differences in the teacher's pupil load, it might be that there were no differences in teacher productivity, or even that there was greater productivity on the part of teachers who taught fewer hours or had the lowest pupil loads. No such qualitative or quantitative differences in output have been demonstrated; on the contrary, there is strong reason to believe that no significant differences in pupil achievement result from the substantial differences in maximum number of teaching hours or maximum number of pupils taught per day.(4)

The preceding analysis does not cover the pupil-teacher ratio for grades, schools, and districts (LCRRUL, p.54-55). All but 13 states have some such requirement, either by statute or by state regulation. These ratios are used in accreditation and state and formulas, but they also have major implications for terms and conditions of teacher employment. In fact, some of the staffing requirements are very similar to clauses in collective bargaining agreements on the same subject. This, of course, also suggests their relevance to the preemption controversy.

e. School calendar and school day. Few terms and conditions of employment are as important to all parties as the number of days and the amount of time per day to be worked. Forty-three states regulate the number of pupil instruction days by statute and eight by state regulation (Oklahoma does so by both. See LCCRUL pp. 64-65). The minimum number of pupil instruction days varies from a low of 172 in Colorado to a high of 185 in Kentucky, with 31 states requiring 180 days. Only three states have a maximum number of pupil instruction days: Illinois and West Virginia (185), and South Dakota (190).

The length of the school day also reflects substantial interstate differences. Thirty-eight states have legislation on the matter. At the kindergarten level, the requirement varies from 2 hours in Montana to 7 hours in Texas and Tennessee. Variations range mostly from 5 to 7 hours a day. In addition, some states have legislated a minimum duration for class periods and a minimum number of hours to be devoted annually to a class. Also, 6 states restrict year around schools and 8 states prohibit or restrict Saturday classes. Over-all, all but 5 states have significant state regulation of the school day, minimum class length, calendar prohibitions, and/or a specified number of pupil instruction days.

f. Sick leave. Table IV-2 summarizes the state legislation on sick leave as of 1967. Although somewhat dated, the summary conveys some of the wide variation from state to state on the subject.

g. Maternity leave. Maternity leave is required by the statutes of many states, but some laws mandated suspension or termination of employment to a degree that violated the federal constitution. (Cleveland Board of Education et al v. La Fleur, 414 U.S.632 (1974)). In some instances, the protections afforded by state laws exceed constitutional requirements. For example, Footnote 13 of the Cleveland decision suggests that school authorities may establish a fixed time during pregnancy for the commencement of maternity leave without violating the Due Process clause of the 14th Amendment to the United States Constitution. This is illegal under New York State Law (New York State Executive Law #296.1(a)) as interpreted by Union Free School District No. 6 of the Towns of Islip and Smithtown et al v. New York State Human Rights Appeal Board, 55 N.Y.S. 371, (1974). The Smithtown decision held that reduction of maternity leave benefits below those mandated by state law was a prohibited subject of bargaining.

h. Military leave. Minnesota (General Statutes #192.26) provides public employees with 15 days leave with pay while in the reserves or some branch of the state or national militia. In New York, military leave with pay for up to 30 days and various other protections and benefits are accorded to employees on military leave by New York State Military Law #232 and #243. Clearly, most if not all states make some provision for military leave.

i. Veterans benefits. Many states have legislated extra employment protections and benefits to veterans, a term typically defined as persons who served in the armed forces during specified wartime periods. Applying for appointment or promotion, veterans may be given extra credits on civil service examinations (e.g., Minnesota Statutes #197.45; California Ed. Code #13735; New York C.S.L. #75). In Massachusetts, a qualified veteran must be accorded employment or promotional preference over non-veterans.

j. Contract performance. New Jersey Statutes #18A:26-10, provides that a teacher may not leave his position during the school year without permission from the board of education. The sanction for violation of this duty is that the teacher may lose

Source: Research Division,
Leaves of Absence (Washington,
D.C.: National Education Asso-
ciation, December 1968) p. 3.

Table IV-2
STATE SICK-LEAVE PROVISIONS

State	Mandatory at full pay		Local boards authorized to regulate	Local boards authorized to exceed mandatory paid leave at full or part pay
	Days a year	Maximum accrual in days		
Alabama	...	...	15 to 35 days a year at discretion of local board	...
Alaska	12a/b/	Unlimited a/b/	...	...
California	10c/	Indefinitely	...	Xc/
Connecticut	15	At least 120	...	X
Delaware	10	120	...	...
District of Columbia	10c/	Indefinitely	...	...
Florida	10	120	...	...
Georgia	1-1/4 for each completed school month	Not cumulative	...	...
Hawaii	18d/	Unlimitedd/	...	...
Idaho	8	90	...	X
Illinois	10	60	...	X
Indiana	10 in first year, 7 a year thereafter	90	...	...
Iowa	10; increases 1 day each consecutive year of employment to 15	At least 90	...	X
Kentucky	10	20	...	X
Louisiana	10	25 in any 3-year periode/	...	X
Maine	10	90	...	...
Maryland	10a/f/	...	...	X
Mississippi	...	...	At discretion of local board	...
Nevada	...	...	At discretion of local board with certain limitsg/	...
New Jersey	At least 10	Indefinitely	...	Xh/
New York	At least 10i/	At least 150i/	...	...
North Carolina	...	...	...	...
North Dakota	At least 10	At least 30	...	...
Ohio	1-1/4 work days for each completed month of service	90	...	X
Oklahoma	10	60	...	X
Oregon	At least 10	100	...	X
Pennsylvania	10	Indefinitely	...	X
Tennessee	1 for each month taught	Indefinitely	...	...
Vermont	10	20	...	...
Virginia	A maximum of 10a/b/	90a/b/	...	...
Washington	10	180	...	X
West Virginia	1-1/2 days per month	60	...	...
Wisconsin	At least 5j/	At least 30k/	...	...

a/ By state board regulation.

b/ Additional leave at part pay is allowed provided the teacher returns to school within 20 days after accumulated leave is exhausted.

c/ After first 10 days' leave, loss of pay shall not exceed substitute's pay for up to five months' absence, but local boards may provide 50% or more in regular pay. For absence beyond five months, pay is in the discretion of the local board, subject to the rules and regulations of the state board.

d/ An additional one day a year may be granted for service before July 1, 1945.

e/ After five years in service the teacher will be allowed to accumulate an additional 20 days.

f/ Does not apply to Baltimore City which sets its own leave policy.

g/ Up to a maximum of 15 days in one school year, and 15 days for each year thereafter to a total of 75 days for five school years.

h/ Increase in total accumulation per school year may not exceed 15 days.

i/ Applies to all school districts except New York City. New York City teachers who are members of the New York City Teachers' Retirement System are entitled to at least 10 days a year, cumulative to a maximum of 200 days.

j/ State board authorized in its discretion to grant up to five days' leave per school term with pay.

k/ Applies to local boards which elect to share in the state funds appropriated for a state teachers' sick-leave plan.

l/ State aid shall not be paid to any districts, except first-class districts, for any year in which teachers' contracts do not so provide.

his certification for up to one year. A number of states have enacted statutes designed to afford public employers similar protections, e.g., South Dakota (#13-43-9), Kansas (#72-5412) and Alabama (#361(L)).

k. Promotion. Closely related to tenure are promotion rights of public employees. New York State's Constitution, Article V, #6 provides that:

"Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive;"

Promotion within a bargaining unit, however, is a mandatory subject of negotiations. Public employers dissatisfied with the strictures of competitive examinations might try to avoid them through collective negotiations; so might unionized employees. Initial employment is less likely to be a mandatory subject of negotiations, at least to the extent that it would preempt state laws requiring competitive examinations might try to avoid them through collective negotiations; so might unionized employees. Initial employment is less likely to be a mandatory subject of negotiations, at least to the extent that it would preempt state laws requiring competitive examinations (cf. NLRB v. Laney & Duke Co., 369 F.2d 859 (5th Cir., 1966)), but negotiations might deal with the establishment of hiring halls.

l. Lunch periods. Several states have enacted a duty free lunch period for employees, either by statute or by state regulation. For example, the New Jersey Administrative Code (#6:3-1.15) provides for a duty-free lunch period for teachers, whereas California provides the same benefit by statute (California Ed. Code #13561 and 13561.1).

m. Personnel evaluation and personnel records. During the past ten years or so, there has been a considerable amount of state legislation devoted to personnel evaluation. Since 1963 in the field of education alone, 30 states have enacted statutes intended to encourage accountability in education. Thirteen of these statutes enacted since 1967 alone deal with teacher evaluation. The Kansas statute (House Bill 1042, enacted in July, 1973, copy attached) is typical of these statutes. As a matter of fact, the "accountability statutes" often include a number of enactments on other terms and conditions of employment. For example, the contracting out of educational services is not only authorized but is encouraged in the California and Colorado statutes. Legislation on in-service education is more frequent although the precise number of states which have legislated

KANSAS

A statute providing for the evaluation of teachers and other school employees in Kansas was amended by the 1973 State Legislature. The bill is reproduced below in its entirety:

HOUSE BILL NO. 1042

(Enacted in July, 1973)

AN ACT concerning education in public and nonpublic elementary and secondary schools; providing for evaluation of teachers and other school employees.

Be it enacted by the Legislature of the State of Kansas:

Section 1. It is hereby declared that the legislative intent of this act is to provide for a systematic method for improvement of school personnel in their jobs and to improve the educational system of this state.

Sec. 2. As used in this act, unless the context otherwise requires:

(a) "Board" means the board of education of a school district and the governing authority of any nonpublic school offering any of grades kindergarten to 12 in accredited schools.

(b) "State board" means the state board of education.

(c) "Employees" means all certificated and noncertificated employees of school districts and similar employees of nonpublic schools.

(d) "School year" means the period from July 1 to June 30.

(e) "Accredited" means accredited by the state board, whether the accreditation applies to a single school, to all of the schools of a school district or to one or more nonpublic schools.

Sec. 3. Prior to January 15, 1974, every board shall adopt a bona fide written policy of personnel evaluation procedure in accordance with this act and file the same with the state board. Every policy so adopted shall:

(a) Be prescribed in writing at the time of original adoption and at all times thereafter when amendments thereto are adopted. The original policy and all amendments thereto shall be promptly filed with the state board.

(b) Include evaluation procedures applicable to all employees.

(c) Provide that all evaluations are to be made in writing and that evaluation documents and responses thereto are to be maintained in a personnel file for each employee for a period of not less than three (3) years from the date each evaluation is made.

(d) Provide that commencing not later than the 1974-1975 school year, every employee in the first two (2) consecutive years of his employment shall be evaluated at least two (2) times per year, and that every employee

during the third and fourth years of his employment shall be evaluated at least one (1) time each year, and that after the fourth year of his employment every employee shall be evaluated at least once in every three (3) years.

Sec. 4. Evaluation policies adopted under section 3 of this act should meet the following guidelines or criteria:

(a) Consideration should be given to the following personal qualities and attributes: Efficiency, personal qualities, professional deportment, ability, health (both physical and mental), results and performance, including in the case of teachers the capacity to maintain control of students, and such other matters as may be deemed relevant.

(b) Community attitudes toward, support for and expectations with regard to educational programs should be reflected.

(c) The original policy and amendments thereto should be developed by the board in cooperation with the persons responsible for making evaluations and the persons who are to be evaluated, and, to the extent practicable, consideration should be given to comment and suggestions from other community interests.

(d) Primary responsibility for making evaluations should rest upon administrative staff.

(e) Persons to be evaluated should participate in their evaluations, including an opportunity for self evaluation.

Sec. 5. Whenever any evaluation is made of an employee, the written document thereof shall be presented to the employee, and the employee shall acknowledge such presentation by his signature thereon. At any time not later than two (2) weeks after such presentation, the employee may respond thereto in writing. Except by order of a court of competent jurisdiction, evaluation documents and responses thereto shall be available only to the evaluated employee, the board, the administrative staff making the same, the state board of education as provided in K.S.A. 72-7515, the members of the board of education, the administrative staff of any school to which such employee applies for employment, and other persons specified by the employee in writing to his board.

Sec. 6. Upon request of any board, the state board shall provide for assistance in the preparation of original policies of personnel evaluation or amendments thereto. In the event that any board has failed to file an adopted bona fide policy as provided by this act on or before January 15, 1974, or if any board fails to file any adopted amendment to such original policy within a reasonable time after adoption thereof, the state board may apply penalties as prescribed by rules and regulations applicable to accreditation of schools.

Sec. 7. This act shall take effect and be in force from and after July 1, 1973, and its publication in the statute book.

on the subject is not available. Furthermore, accountability legislation was introduced but not enacted in at least seven states in 1972-73, so that it appears that the state legislatures could be enacting legislation while Congress is simultaneously preempting it. (Note data on accountability legislation is taken from Cooperative Accountability Repository, November, 1974).(5)

It should be noted that legislation concerning personnel evaluation and personnel files is not always included or categorized as "accountability legislation." For example, Minnesota is not listed as a state with accountability legislation in the SEAR report cited above, but Minnesota law (#125.12, subd. 6(3)) provides: "All evaluations and files generated within a school district relating to each individual teacher shall be available during regular school business hours to each individual teacher upon his written request." Such statements are commonplace in collective bargaining agreements.

n. Residency requirements. Residency requirements are a frequent concern in public employment. Minnesota law (#125.12, subd. 2) states: "No teacher shall be required to reside within the employing school district as a condition to teaching employment or continued teaching employment." By its Administrative Code (#125.12), New Jersey also precludes a residency requirement.

Municipal employees have sought the enactment of such laws to overcome municipal ordinances imposing residency requirements. There are two kinds of residency requirements imposed by municipal ordinances. Some restrict appointment to municipal employment to residents of the community. For example, New York State's Nassau County (Administrative Code #13-1.0) imposes one year's residency within the county as a prerequisite to obtaining a county job. Other ordinances require municipal employees to maintain residence within the municipality (Ordinances of Buffalo, N.Y., Chapter 1, Sec. 5; Charter of Syracuse, N.Y., #8-12, subd. 2). Municipal ordinances requiring employees to live within a municipality or proximate to it are particularly frequent for police officers (Local Law No.3 of 1970 of Kingston, N.Y.). In some instances, local laws imposing residency requirements are explicitly authorized by state law (New York Public Officers Law #30).

o. Legal defense of employees. Several states have enacted laws by which they undertake the defense of their employees in the event of court action against them for actions performed during the course of the employees' official duties. California Government Code #995 provides for such defense when the employee is subjected to a civil claim. Similar laws have been enacted

in New York State with respect to correction officers employed by the state (New York Correction Law #24) and by the Correction department of any city (New York Gen. Mun. Law #50-j). Another New York State law (Public Officers Law #17) differs only in detail and provides similar protection to other state employees. New Jersey goes further. It indemnifies its teachers against both civil and, in some instances, criminal actions (New Jersey Ed. Law #18A:16-6 and 18A:16-61.).

p. Health standards. The LCCRUL report (p.68) shows considerable variation in state provisions concerning health examinations. These provisions can be summarized as follows:

<u>Number</u>	<u>Requirement</u>
18	Proof of good health prior to certification
14	Periodic health examinations
5	Suspension during periods of ill health

Of course, it is unlikely that state authorization for suspension for ill health is really required, since school boards presumably have the authority to suspend for good cause, at least in the absence of any contractual limitation upon this right.

q. In-service training. About two-thirds of the states have enacted statutes relating to in-service training (LCCRUL, p. 45). The content of these statutes varies widely on the nature and duration of the training; who provides the training, whether academic credit is available, and so on. Many matters dealt with in one statute are completely ignored in others. Significantly, bargaining on in-service training is very common in public education, such bargaining may cover compensation for such training, the extent of district support for tuition and expenses, the nature of the training subject to reimbursement, the total amount allocated by the district for in-service training, and reporting and payment schedules.

r. Compulsory arbitration. Several states mandate arbitration to resolve negotiations disputes between their municipalities and their employees. Usually such laws are restricted to public safety occupations (e.g. New York S.L. #209.4; Pennsylvania SB 1343, L. 1968; Oregon Statutes 243.730, #19), but New York City has enacted a local law covering all employment (N.Y.C. Administrative Code #1173-7.0.c). These laws benefit either governments or their employees, depending upon the parti-

cular circumstances of the situation. In general, however, they have been sought by police and firefighter unions and resisted by many others as well as by public employers.

s. Collective bargaining and other representational rights. As of January 1975, 29 states required boards of education to bargain collectively with teacher representatives, or to "meet and confer" with them. The state legislation varies a great deal on who is covered, the administration of the agency, whether recognition is exclusive, the scope of bargaining, organizational security, prohibited practices, impasse procedures, strikes and penalties, and many other matters. (6)

t. Supervisory employees. Unlike the National Labor Relations Act, which does not establish bargaining rights for supervisory employees, many of the state public employee bargaining laws provide such rights. In the field of education alone, some supervisory personnel in 22 states have bargaining or quasi-bargaining rights. (Note: Because some of the state statutes do not clearly define who is covered, and the application of the statutes to supervisory personnel is not always clear, "22" may be subject to minor adjustment).

u. Union security. State differences on union security illustrate the wide differences in state teacher collective bargaining laws. The following summary covers some of the major differences on this issue.

No. of states

29

Collective bargaining or mandatory
"meet and confer" law

Reference to union security

16

No specific provision on union security

7

Agency shop or "fair share" legalized

4

Dues deduction must be in writing

1

Union membership can't be required

1

Maintenance of membership legalized

3

Miscellaneous

Note: Delaware, Minnesota and Florida
have more than one provision.

These results have been extracted from the state statutes covering teachers. In many states, the absence of a legislative determination is no indication of whether a practice is or is not legal. For example, in many states, dues deduction without written approval of the individuals concerned would be illegal even in the absence of a specific statute on the subject. On the other hand, the very fact that there is widespread collective bargaining in states without statutes authorizing public employee bargaining illustrates the need to be cautious in interpreting the absence of a statute in this area.

v. Exclusivity and enforcement of remedies.
Because of the nature of government, it seems obvious that some accommodation must be made for the right of people to petition their government for the redress of grievances (U.S. Constitution, First Amendment). This right may come into conflict with exclusivity where the grievances relate to employment by the government and where the grievant prefers someone other than his union to carry his petition.

A related issue is how the provision of state or federal public employee collective bargaining statutes can be enforced against a state. It should be noted that in Maryland v. Wirtz, 392 U.S. 183 (1968), the Supreme Court recognized that, because of states' sovereign immunity, some of the remedies ordinarily available under the Fair Labor Standards Act might not be available when a state is the employer-defendant. Recently the New York State Court of Claims (PBA v. State of New York, 70 Misc. 2d 335 (1974)) dismissed a union claim that the state had violated a collective agreement because the alleged violation involved no money damages. The court reasoned that only the equitable relief of specific performance could satisfy the complaint and "the equitable powers of the Court of Claims are very limited and are restricted to enforcing a money judgment."

2. Impact of the constraint. In listing the preceding state legal constraints, the objective was to develop a more comprehensive picture of state regulation of educational employment, especially teacher employment. It was assumed that such a picture might reveal, or at least suggest, significant state legislation impairing educational productivity. Of course, the actual impact of such legislation, like any legislation, is affected by several factors not apparent from the statutes themselves. For example, other statutes which may weaken the application of those listed were not identified and analyzed. To illustrate, a state education law may provide for mandatory teacher retirement at age 65. Another law in another section of the state code may permit exceptions to what otherwise seems to be an inflexible rule. In this study, it was seldom possible to identify such related legislation. It should be noted that in some cases, however, the collateral legislation might well have intensified rather than reduced the impact of the constraint.

Another factor not considered was the way in which the constraints are administered. Some constraints are unquestionable widely ignored in practice. For example, state laws which prohibit teachers from teaching out of license, or from doing so more than a stipulated period of time, or except in emergencies, are frequently evaded for a variety of reasons. Likewise, a state mandated duty free lunch period of 30 minutes may be ignored because teachers deprived of the 30 minutes may not find it practical to challenge an administrative decision for a lesser period or perhaps for no duty free lunch at all. The definition of "duty free" is itself subject to varying interpretations.

Nevertheless, despite these and other limitations, the conclusion that the state constraints listed are significant barriers to productivity in some cases is an inescapable one. A few examples which support this conclusion are as follows.

a. Mandatory retirement age. Retirement legislation is clearly one of the most important kinds of state legislation bearing upon educational productivity. This is especially obvious in considering the retirement age mandated by the education codes. The education codes appear to include only 16 of the 50 state retirement ages. Nevertheless, even among these 16, the mandatory retirement varies from a low of 60 in Nebraska to a high of 72 in Arkansas. When early retirement is considered, the range is even greater; e.g., teachers can retire at age 55 in New York City.

Nevertheless, just confining the analysis to mandatory retirement ages in the education codes, it is clear that significant differences bearing upon productivity are virtually certain to prevail between the states. If teachers retire sooner, the retirement fund must be built up in less time and the reserve fund must be larger because the pay-out is for a larger number of years. For example, a \$20,000 a year teacher retiring at half pay at 65 is estimated to draw benefits for approximately 15 years. Thus the teacher's retirement fund should include about \$100,000, since this amount plus accumulated interest should suffice for the \$150,000 payment over ten years. If, however, the teacher retires at 55 instead of 65, the benefit payment is estimated at \$250,000 (over a 25 instead of a 15 year period) and the retirement fund should have \$150,000 at the time the teacher retires. By the same token, if a teacher retires at 72, the teacher has had 17 more years to build up a retirement fund, and the fund will obviously be required for a much smaller number of years.

Note, however, that the employer's contributions under earlier retirement must be larger for two reasons: (1) the longer payment period, and (2) the shorter time in which to build up the retirement fund. Still another factor is the basis on which the pension is based. This varies from the average of the last three years, or average of the three highest years, to the final year's salary. There are also significant differences in whether extra-curricular activities or overtime can be included in computing pension and retirement benefits.

As an abstract proposition, varying benefit levels could equalize the cost factors from a state or school district point of view. It is clear, however, that this is frequently not the case, and that the differences in mandatory retirement age reflect major differences in state and school districts costs.

It is not suggested that such costs should be regarded on the sole determinants of teacher productivity or of appropriate retirement age. Assume that two teachers identical in every way begin teaching at the same age in states A and B. A has a mandatory retirement age of 60, B has one of 70. Assume further that state A must contribute more because the teacher's reserve fund must be built up in fewer years and the payment period is longer, and that these costs to the state are not equalized by a lower benefit level. It is not contended here that state A should therefore adopt the retirement plan of state B, even if it granted that B gets more for its teacher dollar than state B. At

some point, other public policy considerations can outweigh a presumption or even demonstration of greater productivity. On the other hand, it would be equally fallacious to assume that every difference in retirement age or benefit level reflects carefully considered public policy options. Retirement policies in New York City and New York State illustrate the enormous productivity impact of retirement policies. Originally, optional retirement at age 55 was provided police and firefighters on the grounds that it was necessary to maintain a physically alert staff at all times. The option quickly became available to other public employees, including teachers. Since the option would have been unused unless the benefit levels were substantial, relatively generous benefit levels were provided. One outcome was the large scale retirement of productive employees who could make a great deal more by combining retirement (usually at half pay after 20 years of service) with another job. Thus public employers not only pay for the services of the retirees while they are in service but have the additional costs of recruiting and employing new personnel.(7)

b. Instructional hours per teacher. The statutes on instructional load demonstrate both the fortuitousness of the state legislation on terms and conditions of educational employment and its enormous significance for educational productivity. For example, South Carolina and New York limit teachers to 5 teaching hours a day and Missouri limits teachers to 25 teaching hours per week. On the other hand, the limit in Montana is 28 hours a week, and in Alabama and Oklahoma it is 6 hours per day. In other states, the limit is defined in terms of the number of classes rather than the clock hours. Clearly, these differences almost certainly involve substantial differences in productivity. The laws which limits teachers to 5 teaching hours a day means that school districts in such states are deprived of the opportunity to institute a work load which is taken for granted in many other states and school districts, and which could result in substantial savings to the districts.

Note that the 5 hour per day limitation in New York and South Carolina is even more restrictive than the 25 hour per week restriction in Missouri. In the latter, teaching time lost on a particular day due to some kind of emergency can be made up to the 25 hour per week limitation. No such make-up is possible where the limitation is in terms of hours per day, since any making time would result in exceeding the 5 hours per day limitation.

To visualize the potential impact of these limitations, one need only consider their application in the private sector. There are relatively few limitations on the total number of hours worked per day or per week. Instead, management must pay a premium after employees have worked a certain number of hours, usually time and one-half for over 40 hours of work. The state statutes do not even provide for such management flexibility. A district with a 6 hour teaching load would be violating the law by paying a premium to a teacher to accept a sixth hour load. Ironically, New York teachers, even before the advent of collective bargaining, taught more than 5 hours a day by accepting paid extra employment with private schools or with the Board of Education. Thus despite the language of the statute, the teachers retained the right to teach more than 5 hours per day, albeit at a premium. The effect of the statute was to deprive school management of the right to require more than 5 hours, with or without premium pay.

Actually, there is considerable evidence of variation in instructional time per teacher from state to state, less so within states. (C) With the advent of collective bargaining in education, there is strong pressure from teacher unions to eliminate inter-district differences in instructional time by using the lowest figure as the criterion to be applied to all districts.

c. Class size. Both minimum and maximum statutory limitations on class size for individual teachers are indefensible from a productivity standpoint. Why should Maryland teachers be limited to 28 pupils per secondary school class whereas North Carolina, Texas, and Virginia authorize a limit of 35? The difference here is substantial economically but minor from an educational point of view. Four other states limit secondary class size to 35 but with differing kinds of classes excluded from the calculations, and other inconsistencies affecting productivity are apparent.

Alabama, Kentucky, and South Carolina require a minimum of 10 pupils in a class, whereas North Dakota requires at least 6. Although the rationale for these minimums is undoubtedly economic, they are not based upon any clear-cut educational basis, and it would appear that such matters should be left to local determination, as they are in most states.

d. School calendar and school day. As with instructional time and class size, state variations on the number of instruction days in the school year, and the hours per day school must be in session, reflect significant impli-

cations for productivity. These implications extend far beyond the issue of how much school time or teacher time is required to achieve a certain purpose. The implications also extend to both qualitative and quantitative factors in pupil outcomes. This dimension of the problem requires some explanation.

A state law mandating a minimum number of sick leave days may increase the cost of education but will have only minimal effects upon pupil achievement. Even assuming an excessive number of sick leave days and excessive use thereof, the consequences will not normally be reflected in pupil achievement. A contrary point of view is argued in New York City and some other large urban districts, where excessive regular teacher absence is deemed by some to be an important causal factor in low pupil achievement. Such alleged excessive teacher absence is attributed to contractual rather than statutory sick leave, and it might be argued that a statutory maximum on sick leave would be conducive to greater teacher productivity. Regardless, in most cases, the effect of a state mandated minimum sick leave allotment is to add to the costs of education without affecting educational outcomes in any significant way. It should be emphasized that the statutory minimums do not appear to be excessive, although no state by state analysis was made of this issue. Most decidedly, it is not argued here that eliminating sick leave is a means of increasing productivity.

Now this is true for most state mandated teacher benefits, i.e., they add to costs, justified or not, but have no visible impact, good or bad, on pupil achievement. It appears, however, that this is not the case with state legislation on the school calendar and school day. State legislation in this area appears to have greatly increased unnecessary costs in at least two ways. First, it has forced school districts to employ more teachers for longer periods of time than would otherwise be necessary. Secondly, and perhaps much more importantly, statutory calendar and school day requirements have had undesirable effects upon pupil achievement. That is, the legislation not only increases the direct costs for teacher and other employee services but has been an important indirect but causal factor in retarding pupil achievement.⁽¹⁴⁾

Here, it would appear obvious that the differences in the number of pupil instructional days are significant from a productivity standpoint. In fact, achievement by states appears to show no strong correlation to the number of days of instruction, or amount of instructional time per day. It would thus appear that some

districts could lower costs by reducing salaries on the basis of a reduced number of instructional days without any significant impairment of instructional outcomes or could do so were it not for the statutory requirements.

The prohibitions against year around schools or school on Saturday also appear to be unjustified on efficiency grounds. Other considerations may justify the prohibitions, but any limitation on scheduling which inhibits managerial rights to schedule the use of resources for maximum efficiency should be suspect.

The statutory requirements concerning length of school day also appear to reflect major differences in educational productivity. For example, for grades K-12, Arkansas, Louisiana, Mississippi, and South Dakota require 5 hours of instruction, Maryland, Missouri, North Carolina, and North Dakota require 6 hours, and Tennessee and Texas require 7 hours. A requirement of 7 hours per day constitutes a 40 percent increase over a 5 hour requirement. In effect, Colorado requires a minimum of 946 hours of instruction per year (172 days, 5 1/2 hours per day) whereas Kentucky requires 1,110 hours per year (185 days, 6 hours per day in grades 1-12, and Texas requires 1,260 hours (180 days, 7 hours per day), 33 percent more time than Colorado.⁽⁹⁾ Again, since these are minimums, it is possible that actual practice is more consistent than the minimum requirements. On the other hand, there is a tendency for state minimum requirements to become accepted practice.

Abstractly, it might be argued that state differences in the length of the school day do not constitute differences in productivity, because the former are not correlated with output measures. That is, if pupils learn more as a result of a longer school day, the latter does not necessarily reflect a lower level of educational productivity.

The difficulty with this reasoning is not its logic as an abstract possibility. It is the absence of reliable evidence that the abstract possibility is any more than that. In fact, even if a direct correlation between the length of the school day and student learning were established such a relationship would not necessarily mean the state or school district with greater learning was more productive. That would depend upon how much more learning could be attributed to more schooling.

e. State public employee collective bargaining legislation and supervisory employees. Of all the state legislation considered in this study, it is quite possible, if not probable, that the state public employee collective bargaining legislation is having, or will have, a greater impact on educational productivity than any other type of statute. This possibility is not based upon studies of educational productivity under collective bargaining but upon inferences which can be made concerning the impact of collective bargaining on productivity in the private sector, in the light of the differences between education and the private sector. At this point, we shall consider only one aspect of this state legislation, their treatment of supervisors.

As elsewhere discussed in this report, supervisory employees in the private sector are not granted bargaining rights under the NLRA. Originally, supervisors had such rights, but their negative outcomes led to elimination of supervisory bargaining rights in the Taft-Hartley Act of 1948. In the light of this experience in the private sector, it is interesting to note the growth of supervisor unions under the state public employee collective bargaining laws. A recent study shows the following.

<u>States</u>	<u>No. of Districts</u>	<u>Estimated No. of Administrator Unions</u>
Michigan	650	750
New Jersey	605	310
New York	705	215
Connecticut	165	132
Washington	311	115
Massachusetts	360	100
Pennsylvania	505	25
Ohio	621	25

Source: Administrator's Notebook, Vol. XXIII, No. 6.

Elsewhere, there were estimated to be only about 17 unions of middle management, spread over 12 states. It should be noted that all of the states above except Ohio have state bargaining laws which accord bargaining rights to middle management in the schools. The categories of personnel accorded bargaining rights vary somewhat - thus assistant superintendents are included in some but not all states - as do the nature of the bargaining rights, but there can

be no doubt that the state statutes in question seriously impair management efficiency, at least if private sector experience on this issue is any guide.

The preceding items touch upon major terms and conditions of educational employment, but they are nevertheless only part of the state legislation on the subject. The analysis will now turn to some conclusions and recommendations, preceded, however, by a brief comment on the interest group positions on the legislation just discussed.

3. Interest group policies on terms and conditions of employment. Educational interest groups have adopted positions on some but not all of the items (a-v) listed above. In some cases, no formal policy has been adopted but the interest group position is invariably determined by its perceived self-interest.

The most interesting situation arises with respect to the posture of administrative groups toward teacher welfare, where there is a potential conflict between the administrators' public policy position and their self-interest. An example, would be an excessively generous retirement law. From a management standpoint, top level administrators would be expected to oppose such benefits. On the other hand, if the administrators themselves benefit personally from the legislation, they are not likely to oppose it. In fact, self-interest is the crucial test, as was pointed out in the analysis of administrative tenure. If a statute benefits teachers, they will support it regardless of public policy considerations. If it is harmful to effective management, management will oppose it, unless management itself benefits personally therefrom. In that case, the public policy considerations tend to be as irrelevant to management's position as they are to those of teacher organizations.

D. Conclusions and recommendations

The major conclusion to be drawn from this survey is that states and local school districts can effectuate substantial savings without impairment of educational outcomes by repeal or amendment of most of the legislation discussed in this report. "Substantial" may be defined as amounting to hundreds of millions annually on a national basis; no estimate is made to assess the savings possible within a single state by elimination of its legislated inefficiencies.

In the opinion of the principal investigator, the above estimate is probably a conservative one. Even if one confines analysis merely to the legislation discussed in this study, it seems difficult to challenge the conclusion that legislative reform could bring about major gains in productivity. After all, when just the minimum amount of time mandated to conduct the educational enterprise varies by as much as 40-60 percent from state to state, it is difficult to avoid the belief that significant savings are possible. One does not have to seize upon the extreme differences to reach this conclusion. The possibility that legislative reform could lead to major gains in productivity is reinforced by the fact that a major effort along this line is being made to identify, repeal, and/or amend a broad spectrum of federal legislation deemed to inhibit greater productivity without any corresponding public policy benefit or advantage.(10)

As pointed out previously inferences about the impact of a statute are often hazardous. Nevertheless, on some of the most important statutory differences previously listed, there is substantial evidence that the statutory differences are reflected in differences at operational levels. For example, there are major differences at operational levels on the number of instructional days, the length of the school day, class size, and other subjects of legislation covered by this study(11) Judgments about the productivity significance of these differences may be highly tentative and even suspect, but they are less so than judgments that the legislation analyzed has no practical impact on productivity. To assume that statutory differences such as a minimum of 185 school days instead of 172, or a minimum of 7 teacher instructional hours a day instead of 5, or class size maximums of 28 instead of 35, are irrelevant to productivity is simply untenable.

It should also be emphasized that the present study was devoted chiefly to only one category of legislation, i.e., terms and conditions of educational employment. As important as it is, it is most unlikely that this category

included all the major inefficiencies in state legislation. For that matter, the study did not deal with all the possible inefficiencies associated with terms and conditions of educational employment, such as unnecessarily high levels of certification. If education were simply no worse and no better than most other licensed occupations in this regard, it would be safe to say the inefficiencies on this score also would run into the hundreds of millions annually on the most conservative assumptions. This would be the case even if and when the potential savings are evaluated in a labor market characterized by high unemployment.

The second major conclusion to be drawn is that a great deal of state legislation on educational employment is largely fortuitous. That is, the legislation appears to lack any coherent rationale, except what a particular interest group can get enacted at a particular time. The strongest evidence for this conclusion consists of the legislation itself. In reviewing it, one is hard-pressed to find any educational or public policy justification for the interstate differences. The notion that these differences constitute a species of laboratory experiments, with each state a laboratory, is at best a pleasant fiction. Except on a few issues, the state legislatures and executives simply do not know what the other states have or have not done on terms and conditions of educational employment. Impressive evidence on this point is the LCCRUL study, which was published in October 1974. As the NIE Associate Director of Research stated in the foreword, "For the first time there exists a compendium of state constitutional, statutory, regulatory, and administrative provisions relating to education." State summaries of various items have been conducted by the NEA and USOE over a long period of years, but they are largely haphazard and seldom available in a form useful for making policy. In fact, most of the summaries of state legislation lack any feedback on the actual impact of the legislation.

Within the states, there is very little monitoring or feedback on much of the most important educational legislation. States which enacted legislation on the number of instructional days, length of the school day, duration of class periods, and dozens of other matters have frequently maintained such statutes for decades without change - despite differences with neighboring states or all states, and despite educational research since (or even before) the legislation which renders it suspect.

Without question, the state public employee collective bargaining legislation reflects a massive reorientation in educational employment relations likely to have major consequences for educational productivity. Terms and conditions of educational employment, as of public employment generally, are increasingly being resolved by contract instead of by legislation. This shift from a legislative to a contractual approach has much to be said for it. In any case, it appears to be irreversible, at least in the next decade or so.

It is clear, however, that in making the change, the state legislatures have not been fully aware of its productivity or procedural implications or ramifications. For one thing, they did not - or at least have not thus far - related existing legislation on terms and conditions of employment to a collective bargaining or contractual approach to public employment. The legislatures have thus far - an important caveat - not tied collective bargaining rights to repeal of the legislated employee benefits. The obvious rationale for doing so would be that these matters are now subject to bargaining and resolution by contract between the parties. Undoubtedly, were the issue to be considered, political considerations alone would forestall the complete repeal of the legislated system of employee benefits. Nevertheless, it is clear that the establishment of collective bargaining procedures in educational employment, without so much as a backward glance at the existing statutory benefits, raises some basic issues which can no longer be ignored.

In many cases, the problem is not the identification or evaluation of statutory inefficiencies but the political problem of legislating them out of existence. Public employee organizations are not going to ignore any effort to eliminate or reduce their benefits, regardless of the alleged productivity gains that would result therefrom. On the other hand, the advent of collective bargaining in public education provides unique opportunities for tradeoffs which make good sense substantively as well as politically. Substantively, enactment of collective bargaining for educational employees should be tied to repeal or modification of the statutory benefits because the rationale for the bargaining legislation is that employment relations should be resolved contractually rather than legislatively. In the private sector, unions do not have both legislated and contractual benefits at least to the extent that they exist in public education; the difference is one of kind, not just degree.

Substantively, legislatures which enact bargaining rights for teachers would be thoroughly justified in getting out of the business of legislating terms and conditions of educational employment which are mandatory subjects of bargaining. Indeed, it is argued here that it would be con-

trary to public policy for legislatures not to do so. From a productivity standpoint, therefore, the advent of collective bargaining provides a unique opportunity to eliminate the legislated inefficiencies. Politically, the legislatures can give something the public employee unions want very badly, i.e., bargaining rights, while simultaneously eliminating the inefficiencies inherent in legislated terms and conditions of employment. Note also that public management has much to gain also if this approach is adopted. Enactment of public employee collective bargaining legislation is frequently perceived as a defeat for management, as indeed it is when such legislation impairs effective management, i.e., by according bargaining rights to administrative personnel, and by failure to repeal or amend statutory employee benefits. On the other hand, if enactment of appropriate representational rights were tied to repeal of the statutory inefficiencies, management might well adopt a much different attitude toward collective bargaining legislation. Needless to add, such a package would make local school management much more accountable, since such management would no longer be able to use state legislation, such as tenure laws, as an excuse for local deficiencies.

The recommendations which follow from the preceding analysis are both substantive and procedural. They are addressed primarily to state legislators and to those in the executive branch, especially the governors and state executives who exercise significant responsibilities in education, labor relations, and public finance. They should also be viewed as recommendations to state organizations concerned with local school management, e.g., state school board organizations, state associations of school administrators, and so on. Actually, the major thrust of the recommendations applies to other organizations of management personnel as well, e.g., state associations of mayors, city managers, and other policy-making and managerial personnel. Indeed, from a political point of view, it may be essential for all such organizations to work cooperatively in order to generate the necessary political action. Finally, the recommendations are addressed to teacher organizations, even though they are unlikely to greet them enthusiastically.

1. Every state should review its legislation on terms and conditions of educational employment and the legislation which mandates school expenditures, especially those mandating expenditures to be paid from local tax revenues. It is virtually certain that good faith efforts to conduct such a review would reveal significant opportunities to increase educational productivity in every state. Realistically, however, the preceding recommendation simply ex-

presses a policy which theoretically should always be followed by legislative bodies, i.e., it consists of telling them to do what they are supposed to be doing anyway. As for comprehensive reviews of their educational policies, few states have tried it in recent years and their record of achievement is not impressive. In fact, the most comprehensive and expensive state review of education in history, the New York State Commission of the Quality, Cost, and Financing of Elementary and Secondary Education appears to have had minimal impact on state educational policy in New York.(12) Regardless, in light of the establishment of the National Commission on Productivity, the growing importance of and concern over productivity in the public sector, especially in education, the emergence of the accountability movement in education, and the crucial importance of taking action prior to or simultaneously with the enactment of collective bargaining statutes, it may be that a call to action on this problem would be effective, especially if sounded and led by appropriate agencies, such as the National Commission on Productivity, the National Conference of State Legislatures, and/or the Education Commission of the States.

2. There is urgent need for a repository on public employment relations which would provide up-dated summaries and analyses of state legislation in this field. As helpful as is the NCCRUL study, it is a one shot incomplete summary which will be more outdated with each passing year. If state regulation of education or employment relations is to be effective, the various state agencies in these fields must have better information on what other states are doing, and more feed-back on the results thereof.

This study does not take a position on whether there should be a separate repository for educational employment relations or for state and local public employment relations generally. Certainly, both the Education Commission of the States and the National Conference of State Legislatures are logical choices to maintain such a depository, and other agencies could be suggested.

3. In most states, there is urgent need to re-think and reorganize the structure and process of both state and local government to effectuate the shift from a legislative to a contractual approach to terms and conditions of public employment.

4. Whenever legislation is introduced to provide school district employees bargaining rights, the states should do the following:

a. Compile a complete list of all state legislation which affects terms and conditions of employment.

b. Identify the statutes which are inconsistent with a bargaining approach and/or have led to inefficiencies in school operations.

c. Tie the repeal or amendment of appropriate statutes in (b) to the enactment of bargaining rights for school district employees. The major if not the only exceptions should be statutes which deal with retirement or other benefits which should be resolved at the state level for actuarial or insurance reasons, or health and safety statutes which are also terms and conditions of education. Inasmuch as the teacher organizations will try to save as much legislation as possible by labelling it "health" or "safety" legislation, the legislative history of the relevant statutes should be scrutinized carefully to ascertain what role if any health or safety considerations or public agencies in these fields played in the enactment and administration of the statutes.

In the judgment of the chief investigator, the preceding recommendation would lead to substantial efficiencies and would also be very practical politically. In fact, the recommendation is an attempt to take advantage of strategic, once-in-a-lifetime opportunities to effectuate major efficiencies in public education. To understand why this is the case, it is necessary to see that much of this legislation is inconsistent with a bargaining approach.

First legislation to provide bargaining (or "meet and confer") rights for teachers has been enacted in 29 states and introduced in many others. All states, however, appear to have some legislation on the statute books which is inconsistent with bargaining, i.e., a contractual instead of a legislative approach to terms and conditions of employment. For example, state tenure typically regulate the grounds and procedures for firing teachers. At the same time, teacher unions typically try to achieve job security through their collective bargaining agreements. Some states (e.g., New Jersey and New York) have also made it possible for aggrieved teachers to appeal grievances to the chief state school officer. Aggrieved teachers in some states can, therefore, choose to pursue a grievance by the statutory procedure, the appeal to the state commissioner, or the contractual grievance procedure.

Essentially, this situation is not consistent with a bargaining approach to employment relations. Bargaining implies that employment relations should be governed by contractual arrangements between the parties. When states enact bargaining rights for public employees, they should at least be cognizant of the inconsistencies, or possible inconsistencies, between their pre-bargaining legislation and their bargaining laws. The consequences of failure to do so are illustrated by a recent Michigan case, Washtenaw Community College Education Association and James Davenport v. Board of Trustees of Washtenaw Community College, Michigan Court of Appeals, Division 2, Case No. 15662, received August 19, 1974. The education association and the board negotiated a master contract effective July 1, 1969 to August 31, 1971, providing that "instructors shall have the right to join and make deposits in the Teacher Insurance and Annuity Association (TIAA) and/or College Retirement Equities Fund (CREF) retirements fund. The board will deposit to the credit of the instructor an amount which matches the instructor's deposit but not to exceed 5 percent of the instructor's contracted salary."

Subsequently, on July 19, 1970, the state legislature appropriated funds for the college in 1970 PA 83. Section 2 (C) of this act stated: Each of the amounts appropriated shall be used solely for the purposes herein stated, except as otherwise provided by law. "Under no circumstances shall any junior or community college, college, or university pay an employer's contribution to more than one retirement fund providing benefits for any employee." Under Michigan law, the board was already required to make payments to the Public School Employees Retirement Fund. For this reason, the board refused to make any further payments to ITAA and CREF. The association and Davenport filed suit to declare that PA 83 unconstitutionally impaired the master contract; their suit was dismissed in the circuit court but upheld by the appeals court.

Essentially, the decision in this case raises the issue of whether a collective agreement takes precedence over a statute affecting terms and conditions of employment otherwise subject to negotiation. For purposes of this study, the impairment of contract issue is a secondary one. The Michigan legislature could just as easily have clarified the relationship of collective bargaining contracts to future legislation as to legislation enacted prior to the state's public employee bargaining law. The point is not that the collective bargaining agreement should take precedence, or that it should not. It is that the legislature should have considered and resolved the issue instead of leaving it unresolved and subject to lengthy legal proceedings. As the

Michigan court said in the Washtenaw case, "Our research, however, does not disclose a clear statement of legislative intent..." hence the court reversed the circuit court by asserting the supremacy of the collective contract in this particular set of circumstances.

We can now clarify the relationship between productivity and the issue just discussed. Many state laws on terms and conditions of employment for school district personnel are directly responsible for significant inefficiencies in school operations. Repeal or amendment of these laws, unrelated to any other legislative action, will be extremely difficult politically, welcome though any such action might be on productivity grounds alone. On the other hand, teacher organizations are placing a high priority on the enactment or improvement of the state public employee bargaining laws. Therefore, regardless of any productivity issues, the state legislatures would be justified on public policy grounds in re-examining legislated benefits for public employees.

Any such reexamination will raise questions as to whether benefits enacted prior to the enactment of a bargaining law should remain. The legislatures might well adopt the posture that they are willing to authorize bargaining rights for public employees, but only if the legislatures get out of the business of legislating ad hoc terms and conditions of employment. Furthermore, since many statutory benefits were enacted in part because teachers lacked contractual protections, it hardly seems right to authorize the latter without a careful review of the former.

More importantly, the drive for bargaining rights affords legislatures an unparalleled political opportunity to eliminate statutory inefficiencies in terms and conditions of employment. The legislative posture should be: "We'll authorize bargaining rights on the basis of repeal of the pre-bargaining legislation on terms and conditions of employment that we find wasteful." Organizations of school employees are more likely to accept such a package because the legislative approach is inconsistent with the bargaining one anyway, and the more informed union leaders understand this. They will not advocate repeal of statutory terms and conditions of employment that favor teachers, but they will probably accept such a package in most cases. Regardless, the legislatures should act to eliminate the statutory inefficiencies.

These comments are not intended to mean that every statute on terms and conditions of employment for teachers results in inefficiencies and that the repeal of all should necessarily precede enactment of a meaningful bargaining law.

The teacher organizations will argue that the statutory benefits should be regarded as minimal, and that teachers should be allowed to bargain for benefits above the minimum. The crucial point is, however, that any such conclusion should be reached only after a careful statute by statute analysis. The legislatures may decide that as part of a package authorizing teacher bargaining rights, the statute authorizing appeals to the state commissioner, should apply only to teachers not covered by a collective agreement. The legislators and high ranking policy-makers in state government have some leverage in eliminating inefficiencies if such action is tied to the enactment of bargaining rights which are defensible in their own right. Furthermore, and this is crucial politically, teacher organizations can accept the elimination of inefficiencies as part of a package which includes major teacher objectives, whereas their elimination in isolation from any benefits would be a political defeat which they would be forced to resist, in many cases successfully.

The 29 states which have already enacted bargaining laws have largely failed to take advantage of this opportunity to eliminate inefficiencies, inconsistencies, and ambiguities in their approach to employment relations in education. In many of these states, however, the bargaining statute is still an inadequate one from the public employee point of view, hence public employees are conducting vigorous campaigns to amend the bargaining laws. In all such states, in addition to those which have not enacted a bargaining law for public employees, political and educational leaders still have major opportunities to effectuate major gains in productivity. The situation in the other states is not as promising politically and reform may have to await and depend upon the nature of federal legislation providing bargaining rights for state and local public employees.

5. Federal concern over the productivity of local government is reflected in a variety of ways. The most direct and specific way is probably the establishment and activities of the National Commission of Productivity in 1970. Although the NCP has supported studies of productivity in local public services, such as law enforcement and solid waste removal, it has thus far not done so in education. The productivity of a service which involves the full-time activity of one-fourth of our population is obviously a matter of deep concern, and NCP should be encouraged to conduct appropriate activities in the field of education. Significantly, NCP is planning research and action programs related to federal legislation which has a negative impact on productivity. As this study indicates, it would be most unfortunate if NCP ignored state legislation with such an impact. This study has necessarily been limited to two categories of state leg-

islation: (1) Statutes on substantive terms and conditions of educational employment and (2) Statutes on procedures to decide terms and conditions of employment. It is virtually certain, however, that other types of educational legislation and a great deal of non-educational legislation also has a negative impact upon productivity.

At the present time, the federal government has a unique opportunity to increase educational productivity. Unfortunately, this opportunity is apparently not recognized anywhere in the Congress or the executive branch, including the federal bureaucracy. Hopefully, this study will be used to call attention to the problem and possibilities for reform. Some of these possibilities flow from and are related to proposed federal legislation providing collective bargaining rights for state and local public employees. The following chapter will discuss these possibilities.

Footnotes to Chapter IV

1. Problems of productivity measurement in the public sector are discussed in The Wingspread Conference, Productivity in State and Local Government (Washington, D.C.: National Commission on Productivity, 1973).
2. Data on minimum annual salaries is taken from Research Division, Minimum Annual Salaries For Teachers, Research Memo 1971-30 (Washington: National Education Association, December, 1971).
3. Data on sections d and e from visual analysis of state statutes and LCCRUL study.
4. Research on class size is summarized in the Encyclopedia of Educational Research, 4th edition (New York: MacMillan, 1969); and Research Division, Class Size, Research Summary (Washington, D.C.: National Education Association).
5. Phyllis Hawthorne, Legislation by the States: Accountability and Assessment in Education, Revised (Madison, Wisconsin: State Educational Accountability Repository, Cooperative Accountability Project, November, 1974).
6. Office of the Legal Counsel, Summary of Legislation on Teacher Negotiations (Washington, D.C.: National Education Association, 1975); and Department of Research and Information Services, Research Brief Vol. 3, No. 4, A Legislator's Guide to Collective Bargaining in Education (Denver: Education Commission of the States, January 1975).
7. Critiques of actuarial assumptions in New York City and New York State are set forth in the reports of the Permanent Commission on Public Employee Pension and Retirement Systems, 880 Third Avenue, New York, N.Y. In addition, useful analysis may be found in The Fleischmann Report on the Quality, Cost, and Financing of Elementary and Secondary Education in New York State, Volume III (New York, N.Y.: The Viking Press, 1973), pp. 295-344.
8. Educational Research Service, The School Day for Teachers and Pupils, Circular No. 4 (Washington, D.C.: National Education Association, 1971).

9. Lawyers Committee for Civil Rights Under Law, A Study of State Legal Standards for the Provision of Public Education (Washington, D.C.: LCCRUL, 1974), pp. 64-65.

10. Executive Order 11820, which is administered by the Office of Management and Budget, requires in effect a productivity impact statement for any proposed federal regulation.

11. The reference in footnote 8 above is only one illustration. Another is that the median annual retirement allowance for teachers retiring in 1971 was \$13,000 in the New York City system, but only \$1,200 in Wisconsin; in fact, the second highest median allowance for 1971 retirees was \$6,618 for retirees in the New York State system. See bibliography for additional inter-state differences in educational employment.

12. The Fleischmann Report on the Quality, Cost, and Financing of Elementary and Secondary Education in New York State Volumes I-III (New York: Viking Press, 1973).

13. See Office of Teacher Retirement, Teacher Retirement Systems (Washington, D.C.: National Education Association, 1971); and James F. Day, Teacher Retirement in the United States (North Quincy, Mass.: Christopher Publishing House, 1971).

14. For a summary of the undesirable effects of extended schooling, see Youth: Transition to Adulthood: Report of the Panel on Youth of the President's Science Advisory Committee (Washington, D.C.: Government Printing Office, June 1973).

V. Educational Productivity and Federal Public Employee Collective Bargaining Legislation

At first glance, proposed federal legislation providing collective bargaining rights for state-local public employees would appear to have no relationship to the subject of this study. In fact, however, such legislation, if enacted, is likely to have a crucial impact upon the state legislation on terms and conditions of educational employment and hence upon educational productivity. For this reason, an analysis of the proposed federal legislation has been included as a focal point of this study.

A. Proposed federal legislation

Two bills providing bargaining rights for state and local public employees were introduced in the 93rd Congress. H.R.8677 cosponsored by Representatives William Clay and Carl Perkins in the House, and introduced in the Senate as S.3294 by Senator Harrison Williams; and H.R.9730, sponsored by Representative Frank Thompson in the House and introduced in the Senate as S.3294 by Senator Williams. H.R.9730 was introduced in the 94th Congress as H.R.77 although no hearings have been held since the 94th Congress convened to the completion date of this study. H.R.8677 has not been reintroduced to date, although some features of it will undoubtedly be introduced as amendments to H.R.9730. (Note: For editorial simplicity, the following analysis will use only the House numbers.) H.R.8677 and H.R.9730 differ drastically in their potential effects upon state legislation on terms and conditions of public employment. These differences will be elucidated in the following section.

In addition the bills differ in the following other significant ways:

1. Administration of the statute

H.R.8677 - administration by a National Public Employment Relations Commission appointed by the President with advice and consent of the Senate.

H.R.9730 - administered by the National Labor Relations Board.

2. Scope of bargaining

H.R.8677 - terms and conditions of employment and other matters of mutual concern.

H.R.9730 - presumably, terms and conditions of employment as defined and interpreted under the National Labor Relations Act. (In this context, "presumably" means that because H.R.9730 is silent on the specific issue, the assumption is that the issue would be resolved as it is for the private sector under the NLRA).

3. Coverage under the statute

H.R.8677 - supervisors would achieve bargaining rights in separate bargaining units, except in the cases of firefighters, public safety officers, and education employees.

H.R.9730 - presumably, no bargaining rights for supervisors, since supervisors do not have such rights under the NLRA.

4. Organizational security

H.R.8677 - mandates agency shop, with non-member payments to bargaining organization to be equal to dues plus assessments. Would in effect repeal any state right to work legislation affecting public employees. Also, guarantees access to employer facilities for union purposes.

H.R.9730 - presumably, organizational security to be a subject of bargaining, with state right to work laws optional as they are under the Taft-Hartley Act. Silent on access to employer facilities for union purposes, hence item is presumably subject to bargaining as under the NLRA.

5. Impasse procedures

H.R.8677 - legalizes public employee strikes where employee organization refuses to accept binding arbitration and where strikes do not pose clear and present danger to public health or safety.

H.R.9730 - presumably, no statutory limit on right to strike except in national emergency.

6. Grievance procedures

H.R.8677 - mandates binding arbitration of grievances, either in the collective agreement or by appeal of either party to the NPERC in absence of negotiated procedure.

H.R.9730 - presumably, grievance arbitration left as a subject of negotiations.

B. The impact of federal public employee collective bargaining legislation on state statutes on terms and conditions of educational employment

1. The impact of H.R.9730 upon state legislation

H.R.9730, in its entirety, reads as follows:

"(H.R.9730, 93rd Cong., 1st sess.)

A BILL To provide that employees of States and political subdivisions thereof shall be subject to the provisions of the National Labor Relations Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (2) of section 2 of the National Labor Relations Act (29 U.S.C. 152(2)) is amended by striking out 'or any State or political subdivision thereof,'."

Unlike P.L. 93-360, which made changes in the NLRA relating to the special problems of the health care industry while extending NLRA coverage to health care institutions, H.R.9730 does not make any concessions to the special problems of public employment. Thus on its face, H.R.9730 says nothing about its impact upon state legislation. This impact can only be inferred from various Supreme Court decisions interpreting the U.S. Constitution and the NLRA, the basic act amended by H.R.9730, and from related judicial decisions.

The relevant provisions of the Constitution are as follows.

a. Article VI, clause 2 provides that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land and the Judges in every State shall be bound thereby, and any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

b. Article I, Section 8, clause 3 of the Constitution provides that Congress shall have the power to "regulate Commerce...among the states."

c. The Tenth Amendment to the Constitution provides that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In order to explain the problem, let us assume that Congress enacts H.R.9730 as it is. Under H.R.9730, teachers and school boards would have the right to bargain collectively

about job security, retirement, school day, school year, and a host of other matters. We can refer to such matters collectively as the mandatory subjects of bargaining (negotiation). They encompass most of the items discussed in Chapter IV under "terms and conditions of employment."

A basic question which has already risen several times under the NLRA is this: To what extent, if any, can a state limit employers or employee representatives (i.e., "unions") from bargaining on a mandatory subject of bargaining? A rather impressive list of Supreme Court cases makes it clear that the extent is limited largely to matters involving health or safety.⁽¹⁾ That is, in exercising their police powers under the Constitution, states may enact legislation which conflicts to some extent with the rights granted by the NLRB. Otherwise, states cannot limit the scope of bargaining or place minimum or maximum limits on the benefits, so long as the parties have the right under federal law to settle for more or less than the state allows.

The rationale for this interpretation is that in enacting the NLRA, Congress intended to do more than preempt state statutes in direct conflict with the NLRA. It also intended to assert exclusive jurisdiction over the field, such that any state statute which interfered with the freedom of the parties to bargain was also preempted. Although this interpretation has not been applied directly to state and local public employment, and would undoubtedly be challenged if not specifically resolved in federal legislation, it appears to be rather firmly established. In brief, then, H.R.9730 would not only preempt all of the state legislation relating to terms and conditions of employment but the state public employee collective bargaining statutes as well.

2. The impact of H.R.8677 upon state legislation. Unlike H.R.9730, H.R.8677 specifically addresses the preemption issue. Section 13(b) of H.R.8677, which is the relevant section, reads as follows (*italics added*): "All laws or parts of laws of the United States inconsistent with the provisions of this Act are modified or repealed as necessary to remove such inconsistency, and this Act shall take precedence over all ordinances, rules, regulations, or other enactments of any State, territory, or possession of the United States or any political subdivision thereof. Except as otherwise expressly provided herein, nothing contained in this Act shall be construed to deny or otherwise abridge any rights, privileges, or benefits granted by law to employees."

The wording of the last sentence in 13(b) is so simple and appears so innocuous that its enormous significance can be (and has been) widely overlooked. The effect of 13(b) would be to preempt all state legislation on terms and conditions of employment which was not an employee right, privilege, or benefit. Thus a state law providing a maximum number of sick leave days would be preempted, whereas a law providing a minimum number of such days would not be. It should be noted that H.R.8677 was drafted by the Coalition of American Public Employees, (CAPE) a coalition of public employer unions lobbying for federal public employee collective bargaining legislation. Needless to say, the section on preemption, like other sections in the bill, was carefully drafted to assist these unions to organize the public sector without having to give up any benefits they now have.

Section 13(b) was completely ignored during the Congressional committee hearings on H.R.8677 in 1973 and 1974. It is not clear whether the lack of attention to 13(b) was due to the belief that H.R.8677 would not be a focal point of federal legislation, or whether it was due to the fact that 13(b) was not widely understood. At any rate, it is difficult to assume that Congress, in the absence of any public discussion of the matter, would specifically exempt all state legislation providing employee rights, privileges, or benefits, and preempt or remain silent on all other state legislation on terms and conditions of public employment. Clearly, state and local public management was also not cognizant of the matter in 1974 and would have been certain to offer alternatives to 13(b) if it had been. Of course, it might also have been assumed that the preemption policies enunciated under the NLRA would not necessarily prevail under a separate federal law for public employees.

Despite its apparent simplicity, however, 13(b) raises some extremely complex questions of applicability. A law providing a minimum amount of sick leave clearly appears to be an employee benefit. However, what about tenure laws which prescribe the procedure (sometimes the sole procedure) for challenging a dismissal? Such laws may benefit some employees and be disadvantageous to others, or be advantageous to one group of public employees, e.g., teachers, but not to another, e.g., food service workers. These and other problems associated with 13(b) will be illustrated by assessing the impact of H.R.8677 and H.R.9730 upon some of the legislation discussed in Chapter IV.

3. The impact of H.R.8677 and H.R.9730 upon selected state legislation on mandatory subjects of bargaining. In order to illustrate the differing impact of H.R.8677 and H.R.9730 upon state legislation, this section will analyze their effects upon various statutory terms and conditions of educational employment. At the same time, the analysis will point out collateral issues and problems raised by federal public employee collective bargaining legislation.

The mere assertion that there are problems with the legislation may be interpreted as opposition by the proponents of the legislation, especially if the problems are serious and have not been previously discussed. Nevertheless, the analysis is not intended either to support or to oppose a federal public employee bargaining legislation, whether it is H.R.8677, H.R.9730 or some other. Instead, it is an attempt to delineate some issues and problems that should be resolved insofar as federal bargaining rights for state and local public employees are under consideration.

Both H.R.8677 and H.R.9730 raise important preemption issues. However, although H.R.8677 appears to include a preemption policy and H.R.9730 does not, the following analysis is formulated largely in terms of H.R.9730. The basic reason is that the interest groups supporting a federal bill appear to be uniting over H.R.9730 as the vehicle for enacting federal legislation. This is an impression which may be erroneous, or it may become erroneous as circumstances develop. It is, however, more than sheer speculation as evidenced by the NEA's shift from acceptance of H.R.9730 to active support of it in November, 1974. Actually, it is very unlikely that either H.R.8677 or H.R.9730 will be enacted in its present form. For this reason, the analysis should be viewed as an attempt to outline some issues and problems which must be faced in any federal legislation on the subject.

Most emphatically, the analysis is not set forth as a comprehensive statement of preemption or productivity problems arising out of the proposed federal legislation. On the contrary, it is intended only to be illustrative and to highlight the need for a prompt and more comprehensive analysis. This need is underscored by the pervasive neglect of preemption problems by interest groups and government bodies concerned about the proposed federal legislation. From June until early December 1974, the principal investigator interviewed a substantial number of national and state leaders in education. With only one exception, none appeared to be cognizant of the preemption problems

discussed below, even though the problems have drastic implications for their interest groups, for educational governance, for intergovernmental relations, and for educational productivity. This was true regardless of whether the implication or potential consequences of the preemption issues were highly favorable or highly unfavorable to the particular interest group.

a. Tenure and job security. H.R.9730 would preempt the tenure statutes. Administrative personnel as well as teachers would lose their statutory tenure, an outcome completely unrecognized by the vast majority of tenured school administrators. Under H.R.9730, teachers would still have the opportunity to achieve job security through collective bargaining, but administrative personnel would no longer have this right, even if they currently have it pursuant to their state public employee collective bargaining laws. Such laws also would be preempted, leaving large numbers of administrators without either contractual or legislative job security. To say the least, such an unanticipated outcome would be traumatic in many states.

Initially, it appears that 13(b) of H.R.8677 would maintain statutory tenure protection, inasmuch as such protection appears to be an employee benefit, privilege, or right. Nevertheless, this is not altogether certain. In the absence of statutory tenure, teachers will undoubtedly bargain for contractual job security stronger than their statutory protection. Suppose a school board refuses to bargain on such a proposal, alleging that a state statute which is not preempted governs the matter. In order to remove any legal obstacle to bargaining on job security, teacher unions may have to allege that the tenure statutes are not employee benefits and are therefore preempted under 13(b). Of course the unions will want to bargain for contractual protections in addition to legislative ones but what if the tenure statute is drafted (as some are) so the unions cannot bargain for greater protection? Conceivably, school boards may be the last ditch defender of the tenure statutes, since such statutes provide - among other things - longer probationary periods than are likely under collective bargaining.(3)

Statutes specifying the length of a probationary term are an example of laws that may benefit employers in one situation and employees in another. As a matter of fact, enactment of H.R.8677 could lead to some paradoxical situations relating to probationary periods. In the private sector, probationary periods are typically less than three years and there is no doubt that teacher unions would bargain for shorter probationary periods if they have the right to do so. Suppose a teacher union bargains for

a one year probationary period in a state which has a three year probationary period as part of a tenure law otherwise highly supported by teacher unions. Could the teachers bargain for a less than three year probationary period under 13(b), i.e., could they legally maintain the position that only the probationary period in the tenure law was preempted, since the probationary period and it alone was no longer a right, privilege, or benefit granted by law to public employees? And if an employee union has the right to reduce the statutory probationary period of three years to a few months in a collective agreement, would the state courts uphold the other parts of the statute in the absence of a severability clause? That is, if one part of a tenure statute (the probationary period) becomes a mandatory subject of bargaining, what is the legal status of the statute in the absence of a severability clause?

b. Retirement. Any change from legislating to bargaining retirement benefits raises questions that go beyond the problem of preemption. The preemption problem is nevertheless very important. To a large extent, pension rights are constitutionally protected. Employees with vested benefits could not lose such right through negotiations, but new employees coming into public employment could find themselves covered by negotiated pension plans that would be less attractive than those currently provided by statute.

In fact, some such outcome is virtually certain to materialize in New York, where pension and retirement benefits are a major factor in New York City's fiscal crisis.(3)

As in the case of the tenure laws, the protections afforded by state laws and/or state constitutions may be greater than those of federal law and the federal constitution. For example, the New York State Constitution, Article V, #7 protects the pension rights of public employees most generously. It has been interpreted as precluding the diminution of the interest that is to be credited to the account of a member of a pension system for his contributions (Cushman v. Teachers' Retirement Board, 301 NY 501 (1950)). It may even protect a member's interest in having applied to him more beneficial mortality tables (Matter of Ayman v. Teachers' Retirement Board, 9 NY 2d 119 (1960)). One of the many issues raised by H.R.9730 is what happens to employee rights which are contractual by virtue of a state constitution which is itself preempted by federal statute?

Consideration of retirement benefits raises several important issues concerning the authority of public employers to negotiate. In many instances the powers of school districts, public benefit corporations and other governmental or quasi-governmental institutions are limited by the state legislature that created them. What happens when they are explicitly denied the power to perform an act, the performance of which is a mandatory subject of bargaining? Would extension of NLRA coverage to such governmental or quasi-governmental institutions invest them with powers that, by the terms of their corporate structures are ultra vires, or would their duty to negotiate fall short of the full range of mandatory subjects of bargaining by reason of limitations in the legislation creating them? Under NLRA coverage, would the state itself, as source of authority, have to be treated as a joint employer so that the full range of mandatory subjects of bargaining could be considered? If so, would the state be brought to the table at each negotiation or would some form of tiered bargaining emerge with bargaining on different terms of employment taking place in successive stages?

The difficulties are most acute where local government employees are covered by a single state retirement system. Under Minnesota Law #356.24, it is "unlawful for a school district or other governmental subdivision or state agency to...contribute public funds to a supplemental pension or deferred compensation plan which is maintained and operated in addition to a primary pension program for the benefit of governmental subdivision employees." New York State (Ret. and Soc. Sec. Law #444) establishes maximum retirement benefits available to employees who join the New York State Employees Retirement System on or after July 1, 1973 and denies to local governments the power to create their own retirement systems (Ret. and Soc. Sec. Law #113).

As a matter of fact, it appears that in extending NLRA coverage to public employment, at least without amendment, H.R.9730 would lead to basic changes in the very structure of state and local government. This might be desirable, but such change should not happen fortuitously. On the one hand, if public employers and public employee unions have the right to negotiate retirement benefits, it is virtually certain that some will opt out of state systems or negotiate changes that would make it impossible to maintain state retirement systems as we have known them. On the other hand, treating the state as employer for retirement purposes raises a different set of problems. Would there be a state-wide bargaining agent for public employees? Would it be feasible to have public employees represented by one union at the local level, e.g., an AFT local, and a rival union at the state level, e.g., an NEA state affiliate? Who would bargain for public management, in view of the diffuse nature of legislative

and executive responsibility for retirement systems? Would it be feasible to limit state-wide negotiations to retirement benefits? How would the timing of state-wide bargaining on retirement be coordinated with local bargaining so that local employers could estimate their total personnel costs with a reasonable degree of accuracy? And so on.

H.R.8677 would generate some different problems. First it is not clear whether or under what conditions, or according to what criteria, retirement legislation could be interpreted as an employee benefit, hence not subject to preemption. In a state with a poor retirement system, the legislation might well be rejected as a benefit by the employees covered. Note that the Minnesota retirement law, like some others, prohibits the establishment of supplemental retirement systems by local governments. If local public employees could not bargain for benefits above the state system, would they have to accept the legislated system and forego the opportunity to bargain on retirement at any level? Or would the retirement statutes be severable, so that teachers could bargain on certain sections without invalidating the entire statute? These are only a few of the questions raised by H.R.8677 and H.R.9730 in the area of retirement.

c. Salaries and salary schedules. H.R.9730 would preempt all state minimum salary legislation, including the non-financial provisions such as the number of increments, or increments for advanced study. On the other hand, the minimum salary statutes would not be affected by H.R.8677 except insofar as they are not an employee benefit. An example might be a statute calling for the loss of salary for breaking a contract.

d. Pupil load and class size. Under H.R.8677, the statutory maximums would not be preempted since they are teacher benefits. Under H.R.9730, however, all such legislation would be preempted, and the outcome would be resolved at the bargaining table.

e. School calendar and school day. Under H.R.8677 minimums but not maximums would be preempted, since the maximums are a teacher benefit. Some interesting issues would arise concerning legislative stipulations that are both, e.g., a statute that prescribes 180 school days to a year, no more, no less. Assume that school boards want to bargain for more days, teachers' organizations for a smaller number. Or that some teachers feel protected by and satisfied with the 180 day stipulation, whereas others believe they can successfully bargain for less. Is the 180 day requirement preempted or not under H.R.8677? Of course, under H.R.9730, it would be.

f. Collective bargaining. As pointed out in Chapter IV, 29 states require boards of education to bargain collectively or "meet and confer" with representative teacher organizations. All such statutes would be preempted by H.R. 9730. On the other hand, sec. 12 of H.R. 8677 provides that H.R. 8677 shall not apply to states which have established a system of public employment relations which is "substantially equivalent" to the system established in H.R. 8677. "Substantially equivalent" is not defined elsewhere in the act, and its organizational supporters have said only that very few states have established "substantially equivalent" systems.

g. Supervisory employees. As is evident from the preceding paragraph, H.R. 8677 and H.R. 9730 differ drastically in their treatment of bargaining rights for supervisory employees. Under H.R. 9730 such employees in school districts would lose whatever bargaining rights they have under the 29 state statutes previously mentioned. Again, it should be emphasized that under H.R. 9730, a state could probably not enact tenure rights for supervisors, on the grounds that Congressional jurisdiction over public employment relations would be exclusive.

H.R. 8677 would maintain bargaining rights for supervisors, at least in states deemed to have "substantially equivalent" systems of public employment relations (unless, of course, the very existence of supervisory bargaining rights was a criterion leading to a negative judgment on substantial equivalence). As a matter of fact, H.R. 8677 would not only maintain existing bargaining rights for supervisors; it would greatly expand such rights in states which have not enacted bargaining legislation. Furthermore, if the presence of bargaining rights for supervisors was a criterion of substantial equivalence, H.R. 8677 would provide bargaining rights on a national scale for supervisory employees.

C. The educational productivity impact of H.R.8677 and H.R.9730

1. Educational productivity as affected by pre-emption policies. Having summarized the relationship between the proposed federal legislation and state legislation, we can next consider the relationship between the proposed federal legislation and educational productivity. In one respect, H.R.9730 would undoubtedly have a more positive impact than H.R.8677 upon educational productivity. Insofar as state legislation on terms and conditions of public employment constitutes an impediment to productivity, H.R.9730 would solve the problem nationally and thoroughly, i.e., by preempting all such state legislation. In fact, H.R.9730 would solve the problem before most public bodies were aware that a problem existed, or were aware of its extent.

On the other hand, H.R.8677 would enormously exacerbate the problem of educational productivity. Insofar as H.R.8677 would maintain all employee rights, privileges, and benefits under state law, it would neither ameliorate nor exacerbate the problem of educational productivity. However, by preempting the state legislation which limits employee benefits, it would inevitably lead to increased costs without corresponding gains in output. In addition, by super-imposing bargaining rights onto the system of legislated benefits, H.R.8677 would undoubtedly lead to much more costly settlements than H.R.9730. Under H.R.9730, school management would get union concessions in exchange for contractual inclusion of present statutory benefits. Under H.R.8677, this tradeoff would not be available to management; the statutory benefits would be available to unions regardless of bargaining.

As a practical matter, an effort will undoubtedly be made to amend H.R.9730 so that it is more similar to H.R.8677 on the preemption issue. This is predictable because some public employee unions were not aware of the potential impact of H.R.9730 on state legislation. Since most of this state legislation provides public employee rights, privileges, and/or benefits, such as teacher tenure, the public employee unions are not likely to support federal legislation which would preempt all of the state legislation on terms and conditions of employment. Predictably, the fall-back position of the public employee unions if 13(b) cannot be enacted will be to urge the exemption of all state legislation on mandatory subjects of bargaining, since most of this legislation was enacted as an employee benefit. In any case, despite the differences between H.R.8677 and H.R.9730 relating to preemption, they do not reflect any underlying differences between the public employee unions on this issue.

2. Educational productivity and collective bargaining.

The preceding section analyzed the productivity impact of H.R.8677 and H.R.9730 in terms of their effects upon state legislation. On this score, preemptive legislation along the lines of H.R.9730 is clearly preferable to the approach in H.R.8677, or to any approach which super-imposes bargaining rights upon legislative benefits. As important as are these considerations, they provide a far from complete view of the productivity impact of the proposed federal legislation. For a more complete picture, we must also consider the productivity impact of collective bargaining itself.

In the private sector, the productivity impact of collective bargaining is a controversial matter.⁽⁴⁾ Some distinguished labor economists assert that collective bargaining has had a negative impact on productivity. Others assert the contrary. Regardless of any over-all assessment, it seems safe to conclude that the productivity impact of collective bargaining varies from industry to industry. In any event, that is the view adopted here. For this reason no effort will or needs to be made concerning the over-all productivity impact of collective bargaining. Collective bargaining may have had a positive productivity impact in most industries but a negative impact in education. Or it may have had a negative impact in most industries but a positive one in education. In other words, our concern is not the productivity impact of collective bargaining in general but in education or public employment, insofar as there is no reason to distinguish the two. In short, are there any reasons to believe that the productivity impact of collective bargaining in education are or would be different from its impact in the private sector?

The public sector unions argue that with the possible exception of a few special groups, such as police and fire-fighters, there is no difference. In effect, when public employee unions assert that public employee unions are "second class citizens" or that they lack "equity" in relation to private sector unions, they are alleging that the procedures available to public sector unions to advance the interests of their members are not as effective or equal to private sector ones.

In many states, public unions do not have collective bargaining rights and in the vast majority, public employee strikes are illegal. Furthermore, and this is crucial to the purpose of this study, the argument is made that the consequences of according bargaining rights to public employees are no different from the consequences in the private sector. The public employee unions emphasize that teachers in private schools can bargain and strike; those in public schools cannot. Similarly, bus drivers employed by privately owned bus companies can bargain and strike; those employed

by municipally operated firms cannot. In this context, it is urged that the distinction between public and private employment should not matter because the consequences of a strike are the same in both cases. This being the case, it is allegedly inequitable to provide bargaining rights for private but not for public sector employees.

Before proceeding to analyze this issue, its relationship to productivity should be clarified. The public employee unions assert they are disadvantaged procedurally and for no good reason. From a taxpayer's point of view, it might be argued that if public employees are disadvantaged in seeking benefits, the best thing to do is to let well enough alone. Why change to procedures which will add to the costs of public services, i.e., decrease their productivity? That is not the position adopted or recommended here, but we should not lose sight of another possibility. If the procedures available to public employees to advance their interests are superior (from the employee's point of view) to those in the private sector, the public employer will end up paying more than is necessary or equitable for public services. The procedures influence the costs, and hence the productivity of the public sector. Needless to say, the procedures also affect other components of productivity, such as managerial effectiveness, and the effects do not always lead in the same direction.

For present purposes, let us assume that equity between public and private sector unions is a desirable objective. In this context, procedures for the two sectors will be regarded as equitable if they result in equal benefit levels over time for public and private sector employees performing identical work. What, however, is the scope of the equity with which we should be concerned?

Consider a similar problem which arises at the bargaining table. Suppose a public employee union contends, and correctly so, that its constituents have less personal leave benefits than any other group of public employees in the area. Clearly, this appears to be an inequity requiring management concessions at the bargaining table. Suppose, however, that this same group of public employees has sick leave benefits which exceed those elsewhere in the area. If union demands for personal leave are granted, management would be providing not just equity but much more than equity. Its employees would have the best total package, consisting of the best sick leave and "equity" with respect to personal leave. On whose side are the equities now?

In other words, equity is a desirable objective, but its presence or absence in bargaining must be resolved in the context of a total package, not isolated terms and conditions of employment. The same principle can and should be applied to legislation purporting to provide public employees equity vis-a-vis those in the private sector. At the bits and pieces level, we can always find items on which public employees are disadvantaged in comparison to employees in the private sector. The question is whether there are any procedural or bargaining advantages of public sector employment which are not shared, or not shared equally, by private sector employees? History, logic, and current data all suggest that there are. Five such advantages of public over private sector employees can be summarized as follows:

a. Public employees have the benefit of an extensive statutory system of employee rights, privileges, and benefits which is not available to private sector employees.

Historically, collective bargaining in the private sector emerged as a means of selfhelp for those who needed it most. This is hardly the case with public employees in many states. As pointed out previously, teachers are protected to some extent by tenure laws in about 40 states. On the other hand, there were no such statutory protections for private sector employees who gained bargaining rights under the NLRA, nor are there any today. Similarly, all states have retirement systems providing some benefits and protections for public employees, whereas such benefits and protections were non-existent or minimal in the private sector when bargaining rights were established therein.

As pointed out in Chapter IV, the nature and extent of legislation on public employee benefits varies considerably between states and even within states for different categories of public employees. Clearly, however, the benefit level in some states which have not enacted a public employee collective bargaining law, such as California, is very substantial and is far greater than was envisaged - or thus far even achieved - by substantial numbers of private sector employees with bargaining rights. Indeed, as a result of recent Supreme Court decisions involving teacher tenure, public employees now have forms of job security even in the absence of bargaining rights which are not available to millions in the private sector.

Moreover, it should be noted that the states with low levels of public employee benefits also tend to have low levels of private sector benefits. Constitutionally, and even in the absence of a federal or state public employee bargaining law, teachers in Mississippi enjoy protections not shared by many private sector employees in Mississippi. Nevertheless, this is the crucial equity comparison, not the comparison between Mississippi teachers and Michigan auto workers.

b. Public sector employees frequently have recourse to legislative redress when they are unsuccessful at the bargaining table. One of the most neglected, but most troublesome problems of public sector bargaining relates to the much greater availability of political concessions for public sector employees. In the public sector, a local or state union will frequently bargain to impasse and then appeal to a legislative body for concessions which could not be achieved at the bargaining table. Thus in education, teacher unions have often refused to settle at the local level while they lobbied - sometimes successfully - for an increased appropriation from the city or for an increase in state aid which would enable the school board to meet their demands. State employees bargaining with a state executive have frequently lobbied in the legislatures during and after bargaining for benefits which could not be achieved by bargaining. Indeed, the following incident giving rise to this study was a classic example of this dual system of benefits.

In 1972, several New Jersey school districts bargained agreements in which school nurses were paid less than teachers. In many of these districts, the teacher union sought unsuccessfully to have the nurses placed on the same salary schedule as teachers. Nonetheless, and although school nurses had been paid less than teachers for several decades, the state teacher organizations persuaded the New Jersey legislature to place nurses on the same salary schedule as teachers. In short, unlike private sector employees, the school nurses had both a legislative and a contractual opportunity to achieve benefits. This advantage may be reflected in the course of bargaining or may be used subsequently as a additional option - or may be utilized in both ways.

Unquestionably, private sector employees do seek and sometimes achieve benefits through legislation. For example, private sector unions have sometimes been successful in enacting health and safety laws which benefit their members. There are also situations in which private sector unions are successful in achieving legislation which affects their bargaining power. For example, legislation requiring that certain cargoes be manned by U.S. crews obviously strengthen the maritime unions.

Nevertheless, the dissimilarities on the issues are more important than the similarities. All things considered, the private sector unions simply do not have the same recourse to legislative redress as do public employee ones. Terms and conditions of employment for the latter are always in the public arena, hence their opportunities for legislative redress are much greater.

The dilemma here is fundamental and its resolution will not be easy. If bargaining is merely a prelude to legislative appeals, there is a strong disincentive to public management to make concessions at the bargaining table. The logic is similar to that involving arbitration of interest disputes. Why make concessions which will only be used as the point of departure in an appeal to legislative bodies for more? If there is no finality to bargaining, employer concessions made in bargaining lead to excessive settlements at the legislative level.

Policies concerning public employment, including public employee benefits and protections, are inherently matters of public policy. It would be difficult if not impossible to exclude such matters completely from the political process even assuming - which this study does not - that it would be desirable to do so. Clearly, then, the political alternative works to the advantage of public employees, at least in the sense that it is an alternative not typically available to private sector employees.

c. Public employees and public employee unions frequently exercise an influential, sometimes even decisive, role in the election and/or appointment of persons to public management positions. This point is related to (b) above and in some respects, is even more important as a factor affecting the balance of bargaining power in the public sector.

Although all citizens have an interest in who is elected or appointed to public management positions, public employees clearly have a larger than ordinary interest. The citizen or taxpayer wants efficient management of the schools. The teachers, however, have a much greater interest in who gets elected or appointed to school boards; the terms and conditions of their employment are closely tied to the identity of top management officials. For this reason, public employees and public employee unions are especially active in supporting candidates who support the demands of the public employees and their unions. This common sense observation needs no elaboration or documentation. Of course, the actual influence of public employees and public employee unions in electing mayors, governors, school board members, and other top level public management positions (in addition to their role in electing mem-

bers of the legislative branches of local, state, and federal government) varies from time to time, place to place, and according to a number of circumstances. Nevertheless, the difference between public and private employment on this issue is a difference in kind rather than degree, at least in many jurisdictions. Employees in the private sector rarely influence the identity of top management. In fact, any efforts to do so would often strengthen instead of weaken incumbent management. On the other hand, public employee unions are becoming increasingly active and influential in campaigns for public office. Teacher unions are especially active in this regard. (5)

The potential and actual role of public employees and public employee unions in electing top public management frequently has a pervasive effect on the balance of bargaining power. It can affect the choice of management representative, management's orientation to union demands, and management's determination to bargain hard on crucial managerial prerogatives. In the private sector, the issue of whether to contract out bargaining unit work can be made largely on economic grounds. In the public sector, political considerations are much more likely to inhibit management from making the decision called for by economic considerations. All in all, the issue reflects an important advantage of public over private sector unions.

d. Public enterprise cannot be relocated as a result of economic pressures and incentives, hence public employees and public employee unions need not be restrained by the fear of relocation. In the private sector, some enterprise can be relocated if and when union pressures become too onerous. Obviously, one cannot relocate a coal mine, or a harbor, or many other enterprises tied to a particular locale. On the other hand, a great deal of private enterprise can be relocated, a possibility which serves as a moderating influence upon private sector unions. Furthermore, even where an activity is tied to a natural resource, management can often move to another location with the same resource.

In contrast, education, police, fire, sanitation, and other public services must be provided where the public is, not where public management can provide the service more economically. Again, the difference reflects a bargaining power advantage for public over private sector employees.

e. Public management cannot constitutionally require the same degree of loyalty to the employer as can be required in the private sector. It is well settled that public employees do not lose their constitutional rights to criticize public agencies, including their own public employer. In the private sector, an employee is limited in expressing criticisms of his employer or the employer's product or services. On the other hand, teachers are more free to criticize the school board and its programs, policies, and services. Although the matter may be one of degree, there is no question that public employees have the greater freedom.(6)

In mentioning the distinction, there is no intent here to limit the greater freedom of public sector employees to criticize their employer. Rather, the point is that public management lacks some controls over employee behavior that characterize private sector employment. This provides greater bargaining power for public sector employees. They can and do embarrass public employees through allegations that would be grounds for discharge in the private sector.

At this point, however, it must be conceded that public employees are confronted by procedural restrictions in addition to limitations on the right to strike which do not characterize the private sector. For instance, higher salaries and increased benefits in the public sector are frequently subject to legislative processes which have no private sector counterpart. The legal requirement of public employer ratification and legislative action to implement an agreement in the public sector is an obvious difference working to the comparative disadvantage of public employees.

Obviously, opinions will differ on the relative advantages and disadvantages of public sector compared to private sector employment. Perhaps the best comparison is the relative position of employees who do the same work and have comparable service records. From the standpoint of this study, it appears that the advantages of public employment are being underemphasized, to the consequent detriment of public sector productivity. Perhaps the most pressing need at this time is not for sweeping generalizations about who is better off as it is for careful detailed comparisons of both the procedural and substantive advantages and disadvantages of the two sectors.

2. American Federation of Teachers, AFL-CIO.
Same as AFL-CIO position.

Source: Resolutions adopted in annual conventions.

3. American Federation of State, County, and Municipal Employees, (AFSCME) (AFL-CIO). Supports H.R.8677, would accept H.R.9730.

Source: Statement of President Jerry Wurf before Senate Subcommittee on Labor, October 1-2, 1974.

4. Association of Government Employees (independent) (AGE). Opposes federal regulation of state and local public employment relations, i.e., opposes both H.R.8677 and H.R.9730.

Source: Statement of James J. Marshall, Executive Director, before Senate Subcommittee on Labor, October 1-2, 1974.

5. Association of Labor Mediation Agencies (ALMA).

Supports public employee federal legislation providing bargaining rights for state and local public employees, such legislation to authorize state governments to administer state statutes which meet minimum federal standards concerning rights to organize and to bargain, resolution of representation disputes, unit determinations, representation elections, unfair practices, and impartiality of administration. Burden of proving failure to meet federal standards to be on the appropriate federal agency and issue to be resolved in the federal courts.

Source: Statement of Robert D. Helsby, past president of Association of Labor Mediation Agencies and Chairman, ALMA liaison committee concerned with inter-governmental relationships before Senate Subcommittee on Labor, October 1-2, 1974.

6. Coalition of American Public Employees (CAPE). Supports H.R.8677, would accept H.R.9730.

Source: Statement of Ralph J. Flynn, Executive Director, before Senate Subcommittee on Labor, October, 1-2, 1974.

7. National Association of Counties (NAC). Opposes H.R.8677 and H.R.9730.

Source: Statement of Robert Craig representing NAC before Senate Subcommittee on Labor, October 1-2, 1974.

8. National Association of Manufacturers (NAM).
Opposes H.R.8677 and H.R.9730.

Source: Statement of Harold C. Lumb,
consultant to NAM, before Senate Subcommittee on Labor,
October 1-2, 1974.

9. National Education Association (NEA).
Favors H.R.8677, would accept H.R.9730.

Source: Statement of President James A. Harris
before Senate Subcommittee on Labor, October 1-2, 1974.

10. Service Employees International Union (SEIU)
AFL-CIO. Supports H.R.9730.

Source: Statements of Legislative Director
Richard Murphy and four SEIU representatives before Senate
Subcommittee on Labor, October 1-2, 1974.

11. United States Chamber of Commerce.
Opposes H.R.8677 and H.R.9730.

Source: Statement of Robert T. Thompson,
Chairman, Labor Relations Committee, before Senate Sub-
committee on Labor, October 1-2, 1974.

The preceding alignments may be summarized as follows:

Supports H.R.9730

American Federation of Labor and Congress of
Industrial Organizations (AFL-CIO)
American Federation of Teachers (AFT)
Service Employees International Union (SEIU)

Supports H.R.8677

American Federation of State, County, and Municipal
Employees (AFSCME)
Association of Labor Mediation Agencies (ALMA)
Coalition of American Public Employees (CAPE)
National Education Association (NEA)

Opposes H.R.8677 and H.R.9730

Association of Government Employees (AGE)
National Association of Counties (NAC)
National Association of Manufacturers (NAM)
United States Chamber of Commerce (USCC)

E. Conclusions and recommendations

From a productivity standpoint, H.R.9730 is clearly preferable to H.R.8677 for these reasons:

1. H.R.9730 would preempt a substantial body of state legislation generating major educational inefficiencies.

2. H.R.8677 would preempt only the management safeguards in state legislation on terms and conditions of employment, whereas the preemptive effects of H.R.9730 would not be affected by whether state legislation was an employer or an employee right or benefit.

3. Unlike H.R.8677, H.R.9730 would not establish bargaining rights for supervisors.

4. H.R.9730 would provide a more limited and more defensible scope of negotiations than H.R.8677.

5. The costs of administering H.R.9730 would be considerably less than administration costs under H.R.8677. The reasons are that H.R.9730 would utilize existing federal agencies and largely eliminate the need for state labor relations agencies.

Whether there are any public policy advantages of H.R.8677 over H.R.9730 is outside the scope of this study. It should be noted, however, that most of the important differences between the bills do relate directly to their impact on productivity. The public employee unions may eventually agree to support a bill which eliminates these differences; if they do, the amended bill is more likely to resemble H.R.8677 than H.R.9730 on the productivity issues.

Regardless of what amendments may be offered to either H.R.8677 or H.R.9730, several issues other than productivity must be considered in evaluating federal public employee collective bargaining legislation. Clearly, the prospect that such legislation may generate confrontations between federal officials responsible for administering the legislation, and state and local officials, needs to be reviewed carefully. Governors and mayors and other officials may find it politically advantageous to have the federal government take the responsibility for a wide range of labor relations actions which may be very unpopular in the state or local jurisdiction. Thus a state or local official may want to say "The feds made me do it," on certain union demands perceived to be unpopular in the state or local jurisdiction.

Questions have also been raised concerning the administrative feasibility of adding state and local public employment relations to NLRB jurisdiction. The establishment of a new agency such as NPERC would raise a host of questions concerning the precedential value of NLRB decisions and the likely legal and judicial morass that would result. If there is no preemption of state bargaining laws and state statutes on terms and conditions of employment, it appears likely that a federal agency would have to interpret and apply the federal statute to a wide range of state laws. The prospect of federal courts interpreting and applying state statutes on terms and conditions of employment, and/or state courts interpreting and applying federal public employee collective bargaining legislation, is not an appealing one, even if such an outcome cannot be avoided in order to ensure representational rights for state and local public employees.

Clearly, it should take a major public policy benefit to justify these and other risks of federal legislation. Whether ensuring representational rights for all state and local public employees is such a benefit is for Congress to decide. This study is intended to add only one important dimension to the deliberations, to wit, the need to take into account the productivity impact of the proposed federal legislation. Theoretically, such legislation could do much to increase productivity, not only in education but in public employment generally. Practically, this outcome is very doubtful because the unions lobbying for the legislation are not likely to support it with productivity safeguards. This is especially true of the teacher unions, since their constituents have a great deal to lose from a critical review of the state legislation on terms and conditions of employment.

In the opinion of the principal investigator, the problem of providing equity between public and private sector employees is probably not resolvable by limiting the political rights of public employees. Likewise, greater productivity in the field of education appears to be vitally dependent upon recognition of the crucial distinctions between public and private employment, especially on the way these contexts affect bargaining power and productivity.

A concluding comment relates to the accountability problem. Without question, a great deal of undesirable state legislation is enacted and maintained because the state legislatures which mandate the benefits do not have the primary responsibility for raising the revenues to pay for them. This is true despite most state aid to education formulas. What happens is that

the legislatures which enact the benefits get the political credit and are not especially interested in feedback on their effects. The local districts more or less give up on generating the feedback, since they do not have the power to repeal or modify the state mandate. In addition, once an inefficiency is enacted into law, it usually generates a constituency for maintaining it. The public employer interest in eliminating it is too diffuse and lacking in effective political support.

As undesirable as is this outcome in the relationships between state legislatures and local school boards, it is likely to be an even greater problem under a federal public employee collective bargaining law. Although such legislation is only procedural on its face, it will have major consequences for the substantive relations between state and local public employers on the one hand, and public employee unions on the other. Cases now before the Supreme Court, on the authority of the federal government to apply the Fair Labor Standards Act to state and local government, strongly suggest that Congress was not aware of the practical impact of this legislation upon state and local government. It is simply beyond challenge that a similar unawareness prevails with respect to the impact of a federal public employee collective bargaining law. Experience with the state legislation in this field suggests that public management will make costly mistakes in changing from a legislative to a contractual approach to public employment. Given the thousands of public jurisdictions completely unprepared for bargaining, substantial impairment of productivity in state and local government is virtually inevitable. Any federal legislation on the subject should seek to minimize such outcomes providing both a substantial interim period for preparation (a full year would be minimal) and substantial funds for training public management and for monitoring the real costs of public sector contracts, including the costs of bargaining itself. It must be emphasized that these suggestions are made without prejudice to the basic issue of whether such legislation should be enacted at all, even with the safeguards suggested.

Footnotes for Chapter V

1. For the text of H.R.8677 and H.R.9730, an analysis of the bills, and hearings on them in 1973-74, see Hearings before the Special Subcommittee on Labor of the Committee on Education and Labor, House of Representatives, 93rd Congress, 1st session (Washington, D.C.: Government Printing Office, 1974).
2. See Local 24, International Brotherhood of Teamsters v. Oliver, 358 U.S.283, at 295-97; United Airlines v. Industrial Welfare Commission, 28 California Reporter 238, 246 (1963); New York Central Railroad Co. v. Lefkowitz, 259 NYS 2nd 76, 46 Mics. 2nd 68.
3. Myron Lieberman, "Why Teachers Will Oppose Tenure Laws," Saturday Review, March 4, 1972.
4. Derek C. Bok and John T. Dunlop, Labor and the American Community (New York: Simon and Schuster, 1970), pp. 260-80.
5. For a commentary on the political influence of the United Federation of Teachers, see Bernard Bard, "Albert Shanker: A Portrait in Power," Phi Delta Kappa (March 1975), pp. 466-72.
6. See David Rubin, The Rights of Teachers, The Basic ACLU Guide to a Teacher's Constitutional Rights (New York: Avon Books, 1972).

Appendix A-1

Alabama

Tit. 52, § 361(3)

PUBLIC SCHOOL LAWS

Tit. 52, § 361(3)

§ 361(3). Effect of leave of absence on continuing service status - Leave of absence for a period of one year for good cause may be granted to a teacher by the employing board of education without impairment of the continuing status of a teacher, provided that for valid reason the board may extend the leave of absence for one additional year and provided further that in no case shall a teacher who is not entitled to the leave of absence enter the military service of the United States

at a time when there is an existing state of war between the United States of America and any other country, leave of absence shall be granted to such teacher for the duration of the war and until the beginning of the school year next succeeding the date on which said teacher is released from said military service; and on or before which date, said teacher must give written notice to the employing board of education whether or not he desires to be re-employed by said board. If such notice is not received by the employing board of education, or if the teacher notifies the employing board on or before the date specified above that he does not desire re-employment, the employing board has no further responsibility with respect to re-employment of said teacher. The term military service of the United States, as used herein shall include the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, the Army Specialist Corps, the Women's Army Auxiliary Corps, and the Women's Volunteer Reserve of the United States Navy, those persons commissioned in the public health service, or those persons entering into the service of any similar organization heretofore or hereafter formed by the government of the United States. A teacher entering the military service of the United States, who is not on continuing service status but who has accumulated one or more years of teaching experience with an employing board of education immediately prior to entering military service, shall be given credit for such experience with the employing board of education in attaining continuing service status, if such teacher is re-employed by said board of education within one year after the release of that teacher from military service. (1939, p. 759; 1943, p. 303, appvd. June 28, 1943; 1953, p. 1045, appvd. Sept. 16, 1953.)

Note.—This section is old § 361 of this title of the Code, as amended in 1943, renumbered by the 1953 act and amended by substituting the word "of" for the expression "not longer than" after the word "period" in the

first sentence and by adding the phrase "for valid reason the board may extend the leave of absence for one additional year, and provided further that" in said sentence.

Appendix A-2

Alaska

Article A. Sabbatical Leave.

Section	Section
280. Basis of leave	330. Position, tenure and retirement
290. Application	340. Military service and previous leaves of absence
300. Selection of teachers	345. Leave of absence without pay
310. Amount of sabbatical leave and compensation	350. Definitions
320. Responsibility of teacher	

Sec. 14.20.280. Basis of leave. A teacher who has rendered active service for seven or more years in a district is eligible for sabbatical leave. Sabbatical leave may be taken for educational purposes only, and for not more than one school year. (Sec. 1 ch 134 SLA 1962; am Sec. 2 ch 104 SLA 1965; am Sec. 27 ch 98 SLA 1966; am Sec. 1 ch 165 SLA 1965)

Sec. 14.20.290. Application. A teacher who wishes to take sabbatical leave must apply to the governing body of the school district. The teacher must submit information showing his qualifications for sabbatical leave and a plan for his education during the leave. (Sec. 2 ch 134 SLA 1962; am Sec. 28 ch 98 SLA 1966)

Sec. 14.20.300. Selection of teachers. (a) The governing body of the school district has the responsibility for selection of the teachers to be granted sabbatical leave.

(b) In selecting teachers for sabbatical leave, the governing body shall consider the benefit which the school district will derive from the continued use of the teacher for educational purposes, the field of study of the teacher, the contributions of the teacher to education in Alaska, and the seniority of the teacher. (Sec. 3 ch 134 SLA 1962; repealed and reenacted Sec. 29 ch 98 SLA 1966)

Sec. 14.20.310. Amount of sabbatical leave and compensation. (a) The number of teachers eligible for sabbatical leave which may be allowed under secs. 280 - 350 of this chapter is as follows:

(1) not more than one-half of one per cent of the total number of teachers from all borough and city school districts and the state-operated school district may be on state-supported sabbatical leave in any year;

(2) any number of teachers may be on sabbatical leave at school district or personal expense.

(b) A teacher on state-supported sabbatical leave is entitled to one-half his base salary to be paid by the department.

(c) A teacher on sabbatical leave at district expense is entitled to an amount of salary to be determined by the school board. (Sec. 4 ch 134 SLA 1962; am Sec. 3 ch 104 SLA 1965; am Sec. 30 ch 98 SLA 1966; am Sec. 2 ch 165 SLA 1968)

Sec. 14.20.320. Responsibility of teacher. Upon the return of a teacher to his teaching position, the teacher shall make a report to the governing body concerning his educational accomplishments. A teacher who does not serve for at least a full year after his return shall refund to the district, if the sabbatical leave was at district expense, or to the board of state-operated schools, if the sabbatical leave was state-supported, money paid to him under sec. 310 of this chapter unless his failure to serve a full year after return is attributable to sickness, injury or death. (Sec. 5 ch 134 SLA 1962; am Sec. 4 ch 104 SLA 1965; am Sec. 31 ch 98 SLA 1966; am Sec. 20 ch 46 SLA 1970, effective July 1, 1971)

Appendix A-2

Alaska

Sec. 14.20.340. Qualifying, leaving, and retirement. (a) Unless it is otherwise agreed, a teacher returning from sabbatical leave shall return to the position which he occupied before he left.

(b) A sabbatical leave is not an interruption of the continuous service necessary to attain or retain tenure under secs. 150, 155, or 160 of this chapter. However, the time spent on sabbatical leave may not be counted in determining when a teacher has sufficient service to enable him to acquire tenure rights.

(c) A sabbatical leave is not a break in service for retirement purposes. Payment into the retirement fund shall be made on the basis of full salary. (Sec. 5 of 1964 SIA 1963; amended and reenacted Sec. 30 of 1968 SIA 1967)

Sec. 14.20.341. Military service and periods of absence. To determine eligibility for sabbatical leave, leave of absence, service and leave of absence granted before July 1, 1971, are not considered years of service. (Sec. 7 of 1964 SIA 1963; am Sec. 2 of 1968 SIA 1967)

Sec. 14.20.342. Leave of absence without pay. (a) A teacher may be granted a leave of absence without pay for the purposes which may be approved by the governing body of the district if

(1) His application is approved by the governing body of the district; and

(2) He agrees to return to employment in a public school not later than the beginning of the school year following termination of the period for which the leave of absence was granted.

(b) A leave of absence is not an interruption of the continuous service necessary to attain or retain retirement or tenure rights according to secs. 150, 155, or 160 of this chapter. However, the time spent on leave of absence may not be counted in determining when a teacher has sufficient service to enable him to acquire retirement or tenure rights.

(c) The leave of absence is not a break in service for retirement purposes.

(d) The governing body of the district may agree to continue the teacher's retirement contributions if the teacher agrees to pay the required seven per cent of the salary he would have received during his leave of absence and reimburse the district for the district's required retirement contribution. Each year of leave of absence then would count as a year of retirement service.

(e) The governing body of the district may advise the teacher on the district salary schedule when he returns to employment. If the governing body determines that the teacher's leave of absence was educationally or professionally beneficial to the teacher or the district.

(f) A teacher may make contributions to the retirement fund for each year of leave of absence taken before July 1, 1971. The contribution shall include the required per cent of the salary he would have received had he not taken the leave of absence, plus the required employer and state contributions that would have been paid. Cost and interest at the rate prescribed by regulation shall be added as computed from the beginning date of the leave of absence to the date the teacher pays the contribution. (Sec. 5 of 1964 SIA 1963; am Sec. 33, 34 of 1968 SIA 1967; am Sec. 1 of 1968 SIA 1967; am Sec. 1 of 1968 SIA 1967)

Appendix A-3

Arizona

§ 15-444.02. Authorization of leaves of absence; application; preservation of rights

A. The board of trustees may authorize leaves of absence for administrative or teaching personnel when it deems such leaves of absence to be reasonable and for good cause and not detrimental to education within the district.

B. Leaves of absence shall be limited to a period not to exceed one year.

C. Leaves of absence shall be granted upon application stating the purpose of the leave of absence, the facts as to its necessity or advisability, and other information helpful to the board in making a determination as to whether the leave should be granted.

D. If leave is granted, all rights of tenure, retirement, accrued leave with pay, salary increments and other benefits provided by law shall be preserved and available to the applicant after the termination of the leave of absence. Added Laws 1956, Ch. 49, § 1.

Effective July 14, 1956.

Appendix A-4

California

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CERTIFIED EMPLOYEES

§ 13457

Cross References

Change from certificated to noncertificated position, retention of rights and benefits, see §§ 13051, 13055.

Library References

Schools and School Districts §§(1), 133, 14.
C.J.S. Schools and School Districts §§ 107 et seq., 146 to 148, 179.

State employee and teacher benefit programs. Reports of Senate Special Committee on Governmental Administration, 1958. Vol. 1 of Appendix to Journal of the Senate, Reg.Sess., 1959.

Notes of Decisions

I. Construction and application

Notice of pregnancy requirement included in school district rule was inextricably connected with invalid requirement that a teacher go on maternity leave three months prior to the expected birth date of her child; accordingly, in view of the inseparability of those requirements, it was not possible to uphold the validity of the notice requirement and to hold that a violation thereof constituted a valid basis for school district's refusal to reemploy teacher. *Korrblium v. Newark Unified School Dist.* (3/29/74) 112 Cal.App. 457, 67 C.A.3d 623.

Requirement of school district rule that teacher go on maternity leave three months prior to the expected birth date of her child was unconstitutional; so too was rule provision precluding a teacher who has gone on maternity leave from resum-

ing her employment within three months of the birth of her child. *Id.*

A school district governing board may not validly promulgate a rule or regulation providing that no compensation shall be paid to any person by school district during period of maternity leave. 31 Ops.Atty.Gen. 15.

Under this section, governing board of a school district could either authorize or require a teacher to take leave of absence during any part of her pregnancy, and authorize leave of absence during such post-natal period as was medically required. 90 Ops.Atty.Gen. 115.

Under this section, the same deductions from salary should be made as under §§ 13457 and 13459, relating to sick leave. *Id.*

§ 13457. Leaves of absence for study and travel

The governing board of any school district may grant any employee of the district employed in a position requiring certification qualifications, a leave of absence for not to exceed one year for the purpose of permitting study or travel by the employee which will benefit the schools and pupils of the district. The governing board may provide that such a leave of absence be taken in separate six-month periods or separate quarters rather than for a continuous one-year period, provided that the leave of absence for both of the separate six-month periods or any or all quarters shall be commenced and completed within a three-year period. Any period of service by the individual intervening between the two separate six-month periods or separate quarters of the leave of absence shall comprise a part of the service required for a subsequent such leave of absence.

If any leave of absence commenced upon within three years prior to the effective date of the amendments to this section adopted at the 1961 Regular Session of the Legislature, was taken in one or more separate periods of less than one year, the period of service interven-

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ing between such separate periods shall comprise a part of the service required for a subsequent such leave of absence.

(Stats.1959, c. 2, p. 953, § 13457. Amended by Stats.1961, c. 256, p. 1282, § 1; Stats.1967, c. 921, p. 2392, § 1.)

Historical Note

This section originally consisted of the first sentence.

That portion of this section following the first sentence was added by the 1961 amendment.

The 1967 amendment inserted, in the second sentence, the words "or separate quarters" and "or any or all quarters,"

and in the third sentence "or separate quarters."

Derivation: Educ.C.1943, § 13673 (Stats.1943, c. 71, p. 575).

School C. § 5.722, added by Stats.1931, c. 760, p. 1528, § 1, amended by Stats. 1932, c. 462, p. 1810, § 1; Stats.1941, c. 1218, p. 3006, § 1.

Cross References

Change from certificated to noncertificated position, retention of rights and benefits, see §§ 13051, 13053.

Library References

Schools and School Districts § 63(1), 133.14.
C.J.S. Schools and School Districts §§ 197 et seq., 146 to 148, 179.

State employee and teacher benefit programs. Reports of Senate Special Committee on Governmental Administration, 1958. Vol. 1 of Appendix to Journal of the Senate, Reg. Sess., 1959.

Notes of Decisions

Construction and application 1
Mandamus 4
Reinstatement 2
Taxation 3

1. Construction and application

Fact that school district requirement for annual increments of salary of credentialed school-teacher of 75 percent attendance upon teaching duties was applicable to absences due to illness but not to absences due to military or sabbatical leave did not constitute denial of equal protection. *Hunt v. Alum Rock Union Elementary School Dist.* (1970) 86 Cal.Rptr. 622, 7 C.A.3d 612.

A grant of a leave of absence to teacher for one year to be accompanied by payment of compensation must clearly appear to have been asked for and granted for express purpose of study and travel for benefit of school and pupils as provided by School C. § 5.722 (repealed). *Now § 13457 et seq.* *Standard Elementary School Dist. of Kern County v. Healy* (1968) 70 P.2d 123, 26 C.A.2d 172.

Where teacher receives Fulbright grant which requires district to pay salary of foreign exchange teacher, school district may grant teacher sabbatical leave with compensation. 37 Ops.Atty.Gen. 6.

The only leave of absence which is restricted to one year in case of a certified employee of a school district, is the sabbatical leave provided for under §§ 13457 to 13460, and leaves of absence for other purposes may be granted for a longer period than one year provided such period is reasonable. 6 Ops.Atty.Gen. 129.

2. Reinstatement

Section 13462 providing that at expiration of leave of absence employee shall be reinstated in position held by him at time of granting of leave of absence does not require that school teacher upon returning from sabbatical leave be assigned to any specific school but only guarantees that teacher be reinstated in assignment within scope of certificate under which teacher was employed at time sabbatical leave began. *Adelt v. Richmond School Dist.* (1967) 55 Cal.Rptr. 151, 250 C.A.2d 149.

3. Taxation

European educational travel expenses incurred on sabbatical leave by school teacher who was not required as teacher to take such trip which primarily was of personal nature were not deductible "ordinary and necessary business expenses" even though the trip was of value to teacher and school. *Adelson v. U. S.* (C. A.1965) 342 F.2d 232.

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§ 13458

Whether educational travel expenses of a teacher were deductible as "ordinary and necessary business expenses" was question of fact and trial court was not bound to await determination of legislature that educational travel in question made teacher more valuable as sufficient basis on which to conclude that expenses were deductible. *Id.*

Expenses incurred on tour of Europe while on sabbatical leave and during summer vacation by California school teacher, who was not required in his duties as a teacher to take such tour or to take trip as an alternative way of following his profession and whose trip was primarily of a personal nature, were not "ordinary

and necessary business expenses" and he was not entitled to a deduction for such expenses. *Adelson v. U. S.*, (D.C. 1963) 221 F.Supp. 31, affirmed 342 F.2d 1352.

4. Mandamus

Finding in mandamus case that petitioner, a school teacher, was not entitled to compensation under sabbatical leave agreement in that on completion of leave he had not submitted proof of his activities, as required by the agreement, had support in the evidence. *Berry v. Coronado Bd. of Ed. of Coronado Unified School Dist.* (1965) 47 Cal.Rptr. 727, 238 C.A.2d 391.

§ 13458. Time qualifications for leaves of absence for travel and study

No leave of absence shall be granted to any employee under Section 13457 who has not rendered service to the district for at least seven consecutive years preceding the granting of the leave, and not more than one such leave of absence shall be granted in each seven-year period. The governing board granting the leave of absence may, subject to the rules and regulations of the State Board of Education, prescribe the standards of service which shall entitle the employee to the leave of absence. No absence from the service of the district under a leave of absence, other than a leave of absence granted pursuant to Section 13457, granted by the governing board of the district shall be deemed a break in the continuity of service required by this section, and the period of such absence shall not be included as service in computing the seven consecutive years of service required by this section. Service under a national recognized fellowship or foundation approved by the State Board of Education, for a period of not more than one year, for research, teaching or lecturing shall not be deemed a break in continuity of service, and the period of such absence shall be included in computing the seven consecutive years of service required by this section.

(Stats.1959, c. 2, p. 953, § 13458.)

Historical Note

Derivation: Educ.C.1943, § 13974 School C. § 5.722 (see Derivation under (Stats.1943, c. 71, p. 575, amended by § 13457).
Stats.1947, c. 1481, p. 2983, § 1; Stats. 1953, c. 928, p. 2208, § 1; Stats.1957, c. 1048, p. 2278, § 1).

Cross References

Military leave as affecting period and continuity of service, see § 13552.
State board to adopt rules and regulations, see § 152.

Library References

Schools and School Districts 63(1), C.J.S. Schools and School Districts §§ 133.14, 167 et seq., 146 to 148, 179.

California**§ 13458.5 Time qualifications for community college employees**

Notwithstanding any other provision of this code, the governing board of any district which maintains a community college may grant a leave of absence under Section 13457 to any employee engaged in a teaching position in grade 13 or 14 who has rendered service to the district for at least six consecutive years preceding the granting of the leave, but not more than one such leave of absence shall be granted in each six-year period. The governing board granting the leave of absence may, subject to the rules and regulations of the State Board of Education, prescribe the standards of service which shall entitle the employee to the leave of absence. No absence from the service of the district under a leave of absence, other than a leave of absence granted pursuant to Section 13457, granted by the governing board of the district shall be deemed a break in the continuity of service required by this section, and the period of such absence shall not be included as service in computing the six consecutive years of service required by this section. Service under a national recognized fellowship or foundation approved by the State Board of Education, for a period of not more than one year, for research, teaching or lecturing shall not be deemed a break in continuity of service, and the period of such absence shall be included in computing the six consecutive years of service required by this section.

(Added by Stats.1967, c. 975, p. 2544, § 1. Amended by Stats.1968, c. 555, p. 1221, § 1; Stats.1970, c. 102, p. 178, § 179.)

Historical Note

The 1968 amendment substituted "six" for "seven" consecutive years in the last sentence. The 1970 amendment substituted "community" for "junior" college.

Library References

Colleges and Universities ☉8.

C.J.S. Colleges and Universities § 20 et seq.

§ 13459. Service and compensation during leaves of absence for travel and study

Every employee granted a leave of absence pursuant to Section 13457 may be required to perform such services during the leave as the governing board of the district and the employee may agree upon in writing, and the employee shall receive such compensation during the period of the leave as the governing board and the employee may agree upon in writing, which compensation shall be not less than the

difference between the salary of the employee on leave and the salary of a substitute employee in the position which the employee held prior to the granting of the leave. However, in lieu of such difference, the board may pay one-half of the salary of the employee on leave or any additional amount up to and including the full salary of the employee on leave.

(Stats.1959, c. 2, p. 954, § 13459. Amended by Stats.1968, c. 168, p. 394, § 1.)

Historical Note

The 1968 amendment deleted a requirement that the action of the governing board be "with the approval of the county superintendent of schools."

c. 582, p. 1822, § 1; Stats.1955, c. 1034, p. 2523, § 11.

School C. § 5.722 (see Derivation under § 13457).

Derivation: Educ.C.1943, § 13675 (Stats. 1943, c. 71, p. 575, amended by Stats.1953,

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Cross References

Adoption of rule governing compensation during sick leave, see § 13465.
Payment of substitute during certificated employee's sick leave, see § 13467.
Salary for service less than year as affected by leave, see § 13520.

Library References

Schools and School Districts §§ 3(5), 77, 144(1). C.J.S. Schools and School Districts §§ 118, 149, 150, 218 et seq., 270 et seq.

Notes of Decisions

1. In general

European educational travel expenses incurred on sabbatical leave by school teacher who was not required as teacher to take such trip which primarily was of personal nature were not deductible "ordinary and necessary business expenses" even though the trip was of value to teacher and school. *Adelson v. U. S.* (C.A. 1965) 342 F.2d 332.

Expenses incurred on tour of Europe while on sabbatical leave and during summer vacation by California school teacher, who was not required in his duties as a teacher to take such tour or to take trip as an alternative way of following his profession and whose trip was primarily of a personal nature, were not "ordinary and necessary business expenses" and he

was not entitled to a deduction for such expenses. *Adelson v. U. S.* (11 C. 1965) 231 F.Supp. 31 affirmed 342 F.2d 332.

A grant of a leave of absence to teacher for one year to be accompanied by payment of compensation must clearly appear to have been asked for and granted for express purpose of study and travel for benefit of school and pupils as provided by School C. § 5.722 (repealed). See, now, § 13457 et seq.). *Standard Elementary School Dist. of Kern County v. Healy* (1938) 79 P.2d 123, 26 C.A.2d 172.

Where teacher receives Fulbright grant which requires district to pay salary of foreign exchange teacher, school district may grant teacher sabbatical leave with compensation. 37 Ops.Atty.Gen.6.

§ 13460. Agreement to serve following leave of absence; payment for leave of absence time; bond; waiver

Every employee, as a condition to being granted a leave of absence pursuant to Section 13457, shall agree in writing to render a period of service in the employ of the governing board of the district following his return from the leave of absence which is equal to twice the period of the leave. Compensation granted by the governing board to the employee on leave for less than one year may be paid

during the first year of service rendered in the employ of the governing board following the return of the employee from the leave of absence or, in the event that the leave is for a period of one year, such compensation may be paid in two equal annual installments during the first two years of such service following the return of the employee. The compensation shall be paid the employee while on the leave of absence in the same manner as if the employee were teaching in the district, upon the furnishing by the employee of a suitable bond indemnifying the governing board of the district against loss in the event that the employee fails to render the agreed upon period of service in the employ of the governing board following the return of the employee from the leave of absence. The bond shall be exonerated in event the failure of the employee to return and render the agreed upon period of service is caused by the death or physical or mental disability of the employee. If the governing board finds and by resolution declares that the interests of the district will be protected by the written agreement of the employee to return to the service of the district and render the agreed upon period of service therein following his return from the leave, the governing board in its discretion may waive the furnishing of the bond and pay the employee on leave in the same manner as though a bond is furnished.

(Stats.1959, c. 2, p. 954, § 13460. Amended by Stats.1969, c. 934, p. 1954, § 1.)

California

Historical Note

Prior to the 1969 amendment, this section provided:

"Compensation granted by the governing board to the employee on leave may be paid in two equal annual installments during the first two years of service rendered in the employ of the governing board following the return of the employee from the leave of absence. The compensation shall be paid the employee while on the leave of absence in the same manner as if the employee were teaching in the district, upon the furnishing by the employee of a suitable bond indemnifying the governing board of the district against loss in the event that the employee fails to render at least two years' service in the employ of the governing board following the return of the employee from the leave of absence. The bond shall be exonerated in

event the failure of the employee to return and render two years' service is caused by the death or physical or mental disability of the employee. If the governing board finds and by resolution declares that the interests of the district will be protected by the written agreement of the employee to return to the service of the district and render at least two years' service thereon following his return from the leave, the governing board in its discretion may waive the furnishing of the bond and pay the employee on leave in the same manner as though a bond is furnished."

Derivation: Edges C.1943, § 13676 (Stats. 1943, c. 71, p. 576); School C. § 5.722 (see Derivation under § 13457).

Cross References

Compensation during leaves of absence for illness, see § 12467 et seq.
Employees of county superintendents, leaves of absence, see § 825.
Payment of salaries to certificated employees, see § 43501 et seq.

Library References

Schools and School Districts C-23(5), C.J.S. Schools and School Districts §§ 144(5), 118, 149, 150, 228.

§ 13460.3 Pro rata reduction of payment and division of bond proceeds upon partial default

If the employee does not serve for the entire period of service agreed upon under Section 13460, the amount of compensation paid for the leave of absence shall be reduced by an amount which bears the same proportion to the total compensation as the amount of time which was not served bears to the total amount of time agreed upon. If the employee furnished an indemnity bond, upon default, the proceeds of the bond shall be divided between the employee and the school district in the same proportion as the actual amount of time served bears to the amount of time agreed upon.

(Added by Stats.1969, c. 984, p. 1955, § 2.)

§ 13460.5 Manner of payment for leave of absence time; special case

If a unified school district which includes a community college is reorganized so that a community college district is formed in addition to the unified school district, an employee who takes his leave from the unified school district before the reorganization may satisfy the two years' service required by Section 13460 by serving for two years in either the community college district or the unified school district, as they exist after the reorganization, or in both.

(Added by Stats.1969, c. 72, p. 192, § 1. Amended by Stats.1970, c. 102, p. 179, § 180.)

Historical Note

The 1970 amendment substituted "community" for "junior" colleges.

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California

§ 13461. Fulfillment of service requirements by service in one or more districts

Where one governing board serves as the governing board of two or more separate districts, an employee may fulfill the service requirements provided in Section 13458 or in 13460, or both, by service in any one or more of the districts under the jurisdiction of such governing board. At the option of the governing board the provisions of this section may apply in whole or in part to service rendered prior to October 1, 1949.

(Stats.1959, c. 2, p. 954, § 13461.)

Historical Note

Derivation: Educ.C.1943, § 13676.1, added by Stats.1949, c. 1181, p. 2102, § 1.

Notes of Decisions

Construction and application 1
Salary rights 2
Transfer or reassignment 3

1. Construction and application

This section does not require that school teacher upon returning from sabbatical leave be assigned to any specific school but only guarantees that teacher be reinstated in assignment within scope of certificate under which teacher was employed at time sabbatical leave began. *Adelt v. Richmond School Dist.* (1967) 58 Cal.Rptr. 151, 250 C.A.2d 149.

2. Salary rights

Where a teacher was without cause placed upon the unassigned list while away on a leave of absence, upon her return she was entitled to immediate assignment, and she could draw her salary until lawfully assigned to a position in the same class. *Loehr v. Board of Education* (1916) 168 P. 325, 12 C.A. 671.

Where plaintiff, who for more than 10 years had been a principal in the public schools of S. F., was granted a leave of absence by the board of education, and during her absence the position was filled by the election of another teacher and

upon her return she was assigned to the head of a school of a lower grade and at a lower salary, it was an unlawful removal of a teacher without cause. *Fairchild v. Board of Education of City and County of San Francisco* (1895) 40 P. 23, 107 C. 92.

3. Transfer or reassignment

Where school district made no promises prior to teacher's taking sabbatical leave of absence concerning teacher's assignment on her return from leave and it was not in district for teacher to be returned to exact school and class level of students assigned before leave of absence, school district was not estopped to reassign teacher to different school and class level of students upon her return from leave. *Adelt v. Richmond School Dist.* (1967) 58 Cal.Rptr. 151, 250 C.A.2d 149.

Provision of rules and regulations of school district that employees on sabbatical leave of absence shall be permitted to return to that status or rank and division of district's elementary school held at time sabbatical leave was granted did not constitute promise that elementary school teacher would be reinstated at same school and grade level at which teacher was employed prior to taking leave. *Id.*

§ 13462. Reinstatement after leave of absence

At the expiration of the leave of absence of the employee, he shall, unless he otherwise agrees, be reinstated in the position held by him at the time of the granting of the leave of absence.

(Stats.1959, c. 2, p. 954, § 13462.)

Historical Note

Derivation: Educ.C.1943, § 13677 (Stats.1943, c. 71, p. 576). School C. § 5.722 (see Derivation under § 13457).

Cross References

Change from certificated to noncertificated position, retention of rights and benefits, see §§ 13651, 13653.

County superintendent, rights of employees, see § 855.

State colleges,

Absence of employee without leave as resignation, see § 24311.

Reinstatement on expiration of leave, see § 24211.

Library References

Schools and School Districts 63(1).
77, 133.14.

C.J.S. Schools and School Districts §§ 107 et seq., 146 to 148, 179, 270 et seq.

California

§ 13463. Liability for death or injury during leave of absence

Both the governing board of any district and the district shall be freed from any liability for the payment of any compensation or damages provided by law for the death or injury of any employee of the district employed in a position requiring certification qualifications when the death or injury occurs while the employee is on any leave of absence granted under the provisions of Sections 13453 to 13466, inclusive.

(Stats.1959, c. 2, p. 954, § 13463.)

Historical Note

Derivation: Educ.C.1943, § 13678, 5,723, added Stats.1931, c. 700, p. 1599, § (Stats.1943, c. 71, p. 576); School C. § 2.

Cross References

Change from certificated to noncertificated position, retention of rights and benefits, see §§ 13651, 13653.
Workers' compensation insurance, see §§ 812, 857.

§ 13464. Effect of leave of absence on probationary employee

No leave of absence when granted to a probationary employee shall be construed as a break in the continuity of service required for the classification of the employee as permanent. The time during which the leave of absence is taken shall not be considered as employment within the meaning of Sections 13303 to 13312, inclusive, Sections 13314 to 13318, inclusive, Sections 13320 to 13326, inclusive, and Sections 13328 to 13337, inclusive.

(Stats.1959, c. 2, p. 955, § 13464.)

Historical Note

Derivation: Educ.C.1943, § 13679, 5,724, added Stats.1939, c. 138, p. 1253, § (Stats.1943, c. 71, p. 576); School C. § 2.

Cross References

Child care centers, probationary employees, see § 19229.
Complete school year of probationary employee, see § 13328.
Military leave as affecting service and classification, see § 13552.
Probationary employee in children's center, dismissal, see § 19229.
School district's annexation to unified school district, see § 13554.

Library References

Schools and School Districts 33(1), C.J.S. Schools and School Districts §§ 133.11, 133.14, 146 to 148, 170 et seq. 179, 180.

California

§ 13465. Rights to leave of absence of high school district employee employed by community college district

Whenever any permanent or probationary employee of a high school district is employed by a community college district pursuant to Section 13318 or 13321 such employee shall be entitled to retain all sickness and injury, sabbatical and other leave rights accumulated by service prior to such employment and the district shall recognize and grant such rights, including any accumulated rights allowed by the governing board of the high school district, as fully as if there was no change in the district maintaining the community college.

(Stats.1959, c. 2, p. 955, § 13465. Amended by Stats.1970, c. 102, p. 179, § 181.)

Historical Note

The 1970 amendment substituted "community" for "junior" colleges.

Derivation: Educ.C.1943, § 13650, added by Stats.1955, c. 726, p. 1220, § 3.

Cross References

Change from certificated to noncertificated position, retention of rights and benefits, see §§ 13051, 13053.

Library References

Colleges and Universities C=7, S.

C.J.S. Colleges and Universities §§ 16 et seq., 20 et seq.

§ 13465.1 Retention of rights while employed by community college district

Whenever a permanent or probationary certificated employee of a high school district is granted a leave of absence from the high school district and is employed by a community college district which is governed by a governing board composed of identical personnel as the governing board of the high school district from which the employee is on leave, such employee may, at the discretion of the governing board of the community college district, be allowed to retain all sickness and injury, sabbatical and other leave rights accumulated by service with the high school district prior to employment with the community college district, including any accumulated rights allowed by the governing board of the high school district prior to the transfer, as fully as if there were no change in employment from the high school district to the community college district. This section shall be applicable whether the transfer of employment occurred before or after the effective date of this section.

(Added by Stats.1963, c. 638, p. 1631, § 1. Amended by Stats.1970, c. 102, p. 179, § 182.)

Historical Note

The 1970 amendment substituted "community" for "junior" colleges.

Cross References

Change from certificated to noncertificated position, retention of rights and benefits, see §§ 13051, 13053.

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Ch. 2

CERTIFIED EMPLOYEES

§ 13467

§ 13466. Rights to leaves of absence when school or place of employment transferred between districts

When any school or other place of employment shall have been transferred from one district to another, any certificated employees who transfer with said school or other place of employment shall be entitled to retain all sickness and injury, sabbatical and other leave rights accumulated by service prior to such transfer and the district to which such school or other place of employment has been transferred shall recognize or grant such rights, including any accumulated rights allowed by the governing board of the district from which the school or other place of employment was transferred, as fully as if there had been no change in the district maintaining such school or other place of employment.

(Stats.1959, c. 2, p. 955, § 13466.)

Historical Note

Derivation: Educ.C.1943, § 13680, added numbered § 13681 and amended by Stats. by Stats.1955, c. 968, p. 1867, § 1; re- 1957, c. 38, p. 590, § 4.

Cross References

Change from certificated to noncertificated position, retention of rights and benefits. See §§ 13681, 13682.

Library References

Schools and School Districts §§ 77, 133, 14.

C.I.S. Schools and School Districts §§ 107 et seq., 146 to 148, 179, 270 et seq.

§ 13467. Amount and manner of payment during leave of absence, illness or accident

When a person employed in a position requiring certification qualifications is absent from his duties on account of illness or accident for a period of five school months or less, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him for any month in which the absence occurs shall not exceed the sum which is actually paid a substitute employee employed to fill his position during his absence or, if no substitute employee was employed, the amount which would have been paid to the substitute had he been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

The governing board of every school district shall adopt a salary schedule for substitute employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district.

Excepting in a district the governing board of which has adopted a salary schedule for substitute employees of the district, the amount

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paid the substitute employee during any month shall be less than the salary due the employee absent from his duties.

When a person employed in a position requiring certification qualifications is absent from his duties on account of illness for a period of more than five school months, or when a person is absent from his duties for a cause other than illness, the amount deducted from the salary due him for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. Such rules and regulations shall not conflict with rules and regulations of the State Board of Education.

Nothing in this section shall be construed so as to deprive any district, city, or county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons requiring certification qualifications.

This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

(Stats.1959, c. 2, p. 955, § 13467. Amended by Stats.1971, c. 1102, p. 2084, § 1.)

Historical Note

The 1971 amendment inserted the words "or, if no substitute employee was employed, the amount which would have been paid to the substitute had he been employed" in the first sentence and added the second sentence to the first paragraph, and added the second paragraph.

Derivation: Educ.C.1943, § 13841 (Stats.1943, c. 71, p. 578).

School C. § 5.750, added by Stats.1931, c. 237, p. 856, § 1, amended by Stats.1939, c. 1115, p. 369, § 2; Stats.1941, c. 1040, p. 2694, § 1.

Cross References

Change from certificated to noncertificated position, retention of rights and benefits, see §§ 12651, 12653.
Classified employees, leaves of absence, see § 12651 et seq.
Compensation during leave of absence because of accident or illness, see § 13455.
Deductions in salary for leaves of absence for pregnancy, see § 13456.
Employees of county superintendents, leaves of absence, see § 85.
Leaves of absence, industrial, accident and illness, see §§ 13469.1, 12651.2.
Minimum full time salary, see Const. Art. 9, § 6.
Payment of compensation during leave of absence, see § 13460.
Position requiring certification qualifications, see § 12702.
Purpose of study, compensation during leave of absence, see §§ 13457 to 13459.
Reinstatement, full salary for period of suspension to be paid, see § 13459.
Salary schedule for substitute employees, see § 12708.
State board of education, rules, see § 152.
Substitute service by terminated permanent employee, compensation, see § 13445.
Waiting period, sick leave, see § 13465.

Library References

Schools and School Districts (1965), 144(4).
C.L.S. Schools and School Districts §§ 115, 149, 150, 224 to 227.

State employee and teacher benefit programs. Reports of Senate Special Committee on Governmental Administration, 1958. Vol. 1 of Appendix to Journal of the Senate, Reg.Sess., 1959.

Appendix A-4 California

Notes of Decisions

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1. In general

School districts' requirement for annual increments of salary of credentialed school teacher of 75 percent attendance upon teaching duties was consistent with state law, notwithstanding contention that it tended to defeat objectives of sick leave statute (§§ 13155, 13168 and this section) as they applied to certificated employees. *Hunt v. Alum Rock Union Elementary School Dist.* (1970) 86 Cal.Rptr. 983, 7 C.A.3d 612.

School C. § 5.750 (repealed). Now this section providing for the payment of compensation to a teacher during absence from duty because of illness related to absence from duty for which no leave of absence had been obtained. *Standard Elementary School Dist. of Kern County v. Healy* (1938) 70 P.2d 122, 26 C.A.2d 172.

Under this section, the term "period of five school months," referred to therein is a continuous one, and the term "school months" includes legal holidays. 43 Ops. Atty.Gen. 282, 6-10-61.

The governing board of a school district is not required to grant leave of absence to employees in positions not requiring certification qualifications, but if it does so, the employees are entitled to the same minimum leave rights as are provided by law for certified employees. 26 Ops. Atty.Gen. 275.

Under § 13159, relating to leave of absence during pregnancy, the same deductions from salary should be made as under this section and § 13168, relating to sick leave. 26 Ops. Atty.Gen. 118.

2. Computation of length of absence

Accrued leave is included in computation of the length of absences of certified school district personnel because of illness or accident under this section. 29 Ops. Atty.Gen. 62.

3. Absence for five months or less

Teacher's illness for one week did not preclude recovery of salary due under contract as abrogation of contract. *Giguere v. Patterson* (1934) 31 P.2d 891, 138 C.A. 167.

from work in excess of accrued sick leave, only if absence exceeds five school months and governing board has not made rules and regulations pursuant to this section and § 13168, determining amount of salary to be deducted. 28 Ops. Atty.Gen. 212.

6. Deductions

If a teacher takes 10 days leave and subsequently fails to serve the district for full school year, the district may deduct an amount equivalent to the unearned leave from the final check payable to the teacher. 30 Ops. Atty.Gen. 78.

If teacher becomes ill on first day of school and subsequent to the illness she severs her employment with the district before the end of the school year, the district may deduct from her final check a

If school district hires substitute teacher at salary greater than that of regular teacher absent on sick leave, the regular teacher may not be required to contribute the difference between his salary and that of the substitute. 30 Ops. Atty.Gen. 107.

If a teacher becomes ill on the first day of school, but remains for the full year as an employee of the district, she is entitled to draw compensation as provided in this section and § 13168 prescribing the method of computing compensation where absence of illness is under five months as well as where such absence exceeds five months. 30 Ops. Atty.Gen. 78.

4. Absence for more than five months

Where board of education of city and county of San Francisco granted a leave of absence from duties for one year to a permanent teacher in elementary schools, and the teacher was absent from duties for 12 months, the amount, if any, to be deducted from salary due teacher for months in which such absence occurred was for determination by board according to its rules and regulations. *Axelrod v. Board of Education of City and County of San Francisco* (1940) 99 P.2d 571, 37 C.A.2d 367.

5. Rules and regulations

Where a permanent teacher in elementary schools, due to approaching childbirth, had been granted leave of absence from duties for one year by board of education, teacher could demand board to award her compensation for the months of absence where leave of absence, as written, was without compensation, and the teacher did not allege and prove facts concerning dates of illness or childbirth, or that members of board did not act in accordance with regulations of board in making deductions from teacher's salary during teacher's absence. *Axelrod v. Board of Education of City and County of San Francisco* (1940) 99 P.2d 571, 37 C.A.2d 367.

A school district governing board may not validly promulgate a rule or regulation providing that no compensation shall be paid to any person by school district during period of maternity leave. 31 Ops. Atty.Gen. 15.

Section 13520 providing that where employee serves less than a full school year, salary paid shall bear same ratio to establish annual salary as time served bears to annual school term, is applicable to certified employees whose contracts contemplate service for a school year as defined by § 5101 but who, due to illness persisting beyond accrued sick leave, were absent

prorated amount representing unearned sick leave. 1d.

7. Review

On appeal from judgment denying relief to teacher in proceeding to compel board of education to grant compensation to teacher for period of absence from duties, it would be assumed, in support of judgment, that leave of absence, which, as written, was without compensation, was intentionally worded as written, where it was not shown that deduction from salary for the absence of one year was not determined by board in accordance with its regulations. *Axelrod v. Board of Education of City and County of San Francisco* (1940) 99 P.2d 571, 37 C.A.2d 367.

Delaware

§ 1325. Sabbatical Leave

Sabbatical leave may be granted to any properly certified professional employee under the following conditions and provisions:

(1) After seven years of service as a fully certified professional employee defined as a teacher, nurse, supervisor, director, principal, superintendent, coordinator, psychologist, and any other professional employee in public education in the State of Delaware, provided that at least five consecutive years of such service shall have been in the employ of the school board from which leave of absence is sought, unless such board in its discretion shall allow a shorter period of time;

(2) For purposes of professional improvement or for the recovery of health after prolonged illness.

(3) The period of leave shall not be shorter than one-half school term, not longer than one full school term.

(4) While on leave the employee shall not be allowed to engage in full-time gainful employment, except by written agreement with the leave-granting board. However, this provision shall not preclude the employee from receiving grants such as scholarships, gifts, fellowships, part-time employment, or other grants of aid as frequently provided by colleges, universities, governmental agencies, corporations, trusts, or other individuals to students or other persons engaged in study or travel for purposes of professional improvement.

(5) The professional employee shall agree in writing to return to service to the leave-granting board for a period of at least one full school year following the completion of his leave.

(6) Request for sabbatical leave shall be presented in writing to said leave-granting board at a regular meeting of such board before April 1, for leave to begin at the opening of the next term, and before November 1, for leave to begin at the opening of the second semester of the term.

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Delaware

(7) At the end of any such period of leave of absence, the employee shall present evidence of his professional improvement in such terms as shall have been agreed upon between said employee and said leave-granting board at the time when such leave was granted. Such evidence may consist of college transcripts, degrees earned, or written reports by the recipient of the leave of absence.

(8) Said leave-granting board shall accept the employee into full-time employment upon his return from leave and assign him to the position from which he left or to a similar position. In no case, may assignment be made so as to invalidate the employee's certification status or to bring about a demotion in position or salary.

(9) For the purposes of salary increments and pension eligibility and computation, a year of leave shall be considered a year of experience in covered employment under the provisions of local or state salary and pension programs, except that not more than two years of leave shall be applied toward salary increments and pension credits to any person. Failure of an employee to return to service of said leave-granting board shall be cause for forfeiture of salary increments and pension credits for the period of the leave.

(10) School boards may set a limit on the number of employees who may be granted leave each year provided that, in any district having fewer than 20 professional employees, one eligible applicant may be granted leave each year.

(11) The leave-granting district shall provide to the employee granted leave under the foregoing provisions compensation which shall be computed as the difference between that salary which the employee would have been entitled to under full-time assignment conditions, and the State minimum salary provided for the position then held by the leave-taking employee; provided, however, that in no case shall the amount so computed and paid exceed \$2,000 for a full school term leave or \$1,000 for a one-half school term leave.

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Florida State Board of Education Regulations

231.39 Provisions for leave of absence.—Any member of the instructional and administrative staff may secure leave of absence during the year when it is necessary to be absent from duty as prescribed by law and, under certain conditions, may receive compensation during such period of absence. Any such leave of absence shall be classified as sick leave, illness-in-line-of-duty leave, professional leave, or personal leave. Subject to the provisions in the sections which follow, school boards shall prescribe regulations governing the granting of leaves of absence during the year. School boards shall also have authority to prescribe regulations to provide for more extended leaves of absence as follows:

(1) **EXTENDED PROFESSIONAL LEAVE.**—Extended leave for professional development may be granted for a period not to exceed one year to any member of the instructional and administrative staff who has served satisfactorily and successfully in the schools of the district; provided, that partial compensation may be authorized only when the person has served in the district for at least three years or when the leave is granted for additional study in accordance with policies of the school board relating to a program of staff development.

231.42 Professional leave.—Any member of the instructional or professional administrative staff who finds it necessary to be absent from his duties for professional reasons or is assigned by the superintendent under regulations of the school board to be absent for professional reasons or any superintendent may apply for professional leave during such absence. Such leave may be granted under regulations of the school board. The school board shall also prescribe by regulation, subject to any regulations of the state board, conditions under which compensation is to be allowed and the extent of compensation for such leave; provided, that any leave granted under this section for members of the instructional or professional administrative staff must be approved by the superintendent.

History.—1942, ch. 19755, 1979, CGF, 1949, 1972, 1982-1451, 1982, ch. 21724, 1987, 87, ch. 65, 105.

Appendix A-6

Florida

CHAPTER 6A-1

FINANCE AND ADMINISTRATION

Supp. No. 22

6A-1.75 School board to adopt policies on leaves of absence. It shall be the duty of each school board officially to adopt and put into effect policies providing for the administration of Sections 231.39-231.46, Florida Statutes, relating to leaves of absence for the instructional and administrative staff of the district school system, which policies shall include the provisions and follow the definitions contained in state board regulations relating to leave. Where applicable and not inconsistent with law the provisions of state board regulations shall be followed in districts having local tenure laws, and also in granting leaves of absence to other employees of the district school system, as provided in Section 231.46, Florida Statutes.

General Authority 229.053(1) FS. Law Implemented 231.39 FS.

6A-1.76 Definition of leave of absence. Leave of absence is defined as permission granted by a school board, or allowed under its adopted policies, for an employee to be absent from his duties for a specified period of time with the right of returning to employment without prejudice on expiration of the leave, as provided in Sections 231.39-231.46 and Section 231.46, Florida Statutes. Leave shall be officially granted in advance, and no action purporting to grant leave retroactively shall be recognized; provided that leave for sickness, or other emergencies, may be deemed to be granted in advance if prompt report is made to the proper authority. Leave may be with or without pay as provided by law and policies of the school board.

General Authority 229.053(1) FS. Law Implemented 231.39 FS.

6A-1.77 All proper absence from duty to be covered by leave. All absence of school board employees from duty for good reason shall be covered by leave duly authorized and granted and accurately reported and recorded. Records of leave shall be kept by the county superintendent. Any employee willfully absent from duty without leave shall forfeit compensation for the time of such absence and be subject to discharge and forfeiture of tenure and all other rights and privileges as provided by law. If an employee granted leave fails to return to duty at the termination of the leave his employment shall be subject to cancellation by the school board.

General Authority 229.053(1) FS. Law Implemented 231.39, 231.44, 231.48 FS.

6A-1.78 Leave discretionary with board unless otherwise provided by law. Unless otherwise specifically provided by law, the granting of leave shall be at the discretion of the school board. When in the discretion of the school board leave is granted, it shall be allowed on the basis of policies designed to protect the operation of the schools against undue interruption or disturbance because of absence of personnel. Granting of leave to administrative and special instructional service personnel employed to render services to pupils during the 11th and 12th months (summer program) shall not relieve the district of the obligation to provide such services, or if not provided, be subject to deductions under the

minimum foundation program as prescribed by law and state board regulations.

General Authority 229.053(1) FS. Law Implemented 231.39, 231.43, 231.48 FS.

6A-1.79 Leave to be used for the purposes set forth in application. Leave granted on the request of an employee shall be for particular purposes or causes which shall be set forth in a written application for leave. The school board shall have the right to determine that the leave is used for the purposes or causes set forth in the application, and if not so used, the board shall have authority to cancel the leave.

General Authority 229.053(1) FS. Law Implemented 231.39 FS.

6A-1.80 Maximum extent of leave. No leave, except military leave, shall be granted at one time for a period greater than one year, but the school board may adopt policies whereby a new application for leave may be filed at the expiration of leave and new leave granted at the discretion of the board. Such policies shall be based on the requirements of efficient operation of the district school system as well as on consideration of what is fair to the employee. Automatic renewals of leave shall not be allowed.

General Authority 229.053(1) FS. Law Implemented 231.39 FS.

6A-1.81 Professional leave and extended professional leave: definition. Professional leave is defined as leave granted to a member of the instructional or administrative staff to engage in activities which will result in his professional benefit or advancement, including earning of college credits and degrees, or that will contribute to the profession of teaching. Extended professional leave is such leave extending for more than thirty consecutive days. Professional leave or extended professional leave ordinarily will be initiated by the employee and will be primarily for his benefit, or that of the teaching profession, and only incidentally for the benefit of the school board. Compensation during professional leave, or extended professional leave, may be allowed as provided by law, state board regulations, and policies of the school board. School boards may grant any member of the instructional or administrative staff three consecutive weeks professional leave during any fiscal year with compensation when school is not in session; such leave shall be cumulative for not more than two years.

General Authority 229.053(1) FS. Law Implemented 231.39, 236.02 FS.

Hawaii

Sec. 297-22. Sabbatical leaves authorized. The department of education may grant a year's or six months' sabbatical leave of absence of any teacher or educational officer who has served seven years in the public schools of the State, such teacher or educational officer to be guaranteed a return to his or an equivalent position at the expiration of the leave.

In granting sabbatical leaves, the department of education shall consider, but shall not be limited to, the following:

- (1) The nature and length of professional educational course work, research, or other professional activity approved by the department; and
- (2) Applicant's seniority, provided that seniority shall not be the dominant factor in granting professional leaves.

Such leave shall not be extended beyond one year and may not be repeated until after a period of seven additional years of service.

Sec. 297-23. Pay while on sabbatical. Teachers or educational officers on sabbatical leaves shall be paid an amount equal to one-half of the salary to which the teacher or educational officer would be entitled if regularly reappointed. The payments shall be made in regular monthly installments, the last two of which shall not be made until after the teacher or educational officer has returned to his position in the department of education. A teacher or educational officer granted such leave may engage in any form of employment provided that the conditions established in section 297-24 are fulfilled.

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Sec. 297-24. Conditions of sabbatical leave of absence. A teacher or educational officer on sabbatical leave shall devote one-half of his total leave to professional educational course work, research, or other professional activity approved by the department of education. The department shall establish guidelines and criteria of professional educational course work, research, or other professional activity. Before granting a sabbatical leave to a teacher or educational officer, the department and the teacher or educational officer shall enter into a contract which shall provide for the following:

- (1) That the teacher or educational officer agrees to return to serve in the department, the University of Hawaii, or any community college for a period of not less than two years within one year after termination of the teacher's or educational officer's sabbatical leave;
- (2) That upon failure of the teacher or educational officer to comply with the above clause (1), the teacher or educational officer agrees to refund the department all moneys received while on sabbatical leave;
- (3) That upon failure of the teacher or educational officer to comply with the above clause (2), the teacher or educational officer agrees to pay for all costs incurred by the department in enforcing clause (2);
- (4) That upon failure to comply with the above clause (1), the teacher's or educational officer's Hawaii teaching certificate shall be canceled by the department;
- (5) And any other provisions deemed necessary by the department to be included in the contract.

Appendix A-8

ILLINOIS

24-6.1

Sabbatical leave.

Every school board may grant a sabbatical leave of absence to a teacher, principal or superintendent performing contractual continued service for a period of at least 4 school months but not in excess of one school term for resident study, research, travel or other purposes designed to improve the school system. The grant of a sabbatical leave by a school board shall constitute a finding that the leave is deemed to benefit the school system by improving the quality and level of experience of the teaching force.

This leave may be granted after completion of at least 6 years of satisfactory service as a full-time teacher, principal or superintendent and may again be granted after completion of a subsequent period of 6 years of such service. A leave granted for a period of one school year or less shall bar a further sabbatical leave until completion of 6 years additional satisfactory service. The leave shall be conditional upon a plan for resident study, research, travel or other activities proposed by the applicant and deemed by the board to benefit the school system, which plan shall be approved by the board and not thereafter modified without the approval of the board.

Before a leave is granted pursuant to this Section, the applicant shall agree in writing that if at the expiration of such leave he does not return to and perform contractual continued service in the district for at least one school year after his return, all sums of money received from the board during his sabbatical leave will be refunded to the board unless such return and performance is prevented by illness or incapacity.

During absence pursuant to such leave, such teacher, principal or superintendent shall receive the same basic salary as if in active service, except that there may be deducted therefrom an

amount equivalent to the amount payable for substitute service. However, such salary after deduction for substitute service shall in no case be less than the minimum provided by Section 24-6 of this Act or 1/2 of the basic salary, whichever is greater. The person on leave shall not engage in any activity for which salary or compensation is paid, unless the activity is directly related to the purpose for which the leave is granted and is approved by the board. A sabbatical leave may be granted to enable the applicant, if otherwise eligible, to accept scholarships for study or research, unless justified by illness or incapacity. Failure of any person granted a leave under this Section to devote the entire period to the purposes for which the leave was granted shall constitute a cause for removal from teaching service.

Upon expiration of a leave granted pursuant to this Section and upon presentation of evidence satisfactory to the board showing compliance with the conditions of the leave, the teacher, principal or superintendent shall be returned to a position equivalent to that formerly occupied. The contractual continued service status of the person on sabbatical leave shall not be affected.

Absence during a leave granted pursuant to this Section shall not be construed as a discontinuance of service for any purpose, including progression on the salary schedule if one is in effect in the district. The board shall pay the contribution to the Teachers' Retirement System required of the person on leave computed on the annual full-time salary rate under which the member last received earnings immediately prior to the leave or a proportionate part of such rate for a partial year of sabbatical leave credit.

This Section in no way limits the power of the board to grant leaves for other purposes. (As amended by act approved Sept. 7, 1967, L. 1967, p. --, S.B. No. 819.)

Appendix A-9

Indiana

29-6-12-5 [28-1515]. Leaves of absence—Sabbaticals—Disability or sickness.—Any school corporation may grant a leave of absence for a period not exceeding one (1) year to a teacher for a sabbatical or sick leave. This time shall be credited towards the teacher's tenure and retirement.

A school corporation may grant partial compensation for a leave of absence in an amount determined by the school corporation. However, should the teacher during a sabbatical serve any employer that agrees to reimburse the school corporation the amount of the teacher's regular salary, the school corporation may grant full compensation.

A contract is required for a leave granted under this section.

(a) A school corporation may grant a sabbatical to a teacher, upon written request, for improvement of professional skills through advanced study, work experience, teacher exchange programs, or approved educational travel. A teacher after taking a sabbatical shall return for a period of time equal to the length of time of the sabbatical leave granted.

(b) With or without a written request, a school corporation may place a teacher on leave of absence for a period not exceeding one (1) year because of disability or sickness. However, a teacher, not having made a written request, shall have the right to a hearing on such action in accordance with the provision for hearings contained in section 2 [29-6-12-2] of this chapter. [Acts 1927, ch. 97, § 5, p. 256; 1933, ch. 116, § 1, p. 716; 1971, P. L. 92, § 1, p. 311.]

Compiler's Note. By § 1 of A. C. 1965, ch. 10, compiled as 29-6-12-1 all teachers employed in the public schools of the state are granted all of the rights, privileges and protections of this act.

Title of Amending Act. The title of Act 1971, P. L. 92, is: "An act to amend IC 1971, 29-6-12-1 as it relates to teachers' leaves of absence."

Amendments. As originally enacted this section read: "Any school corporation, upon written request, may grant leaves of absence for periods not exceeding one year, to any permanent teacher for study or professional improvement or because of physical disability or illness, subject to such rules and regulations governing leave of absence as may be adopted by such corporation. Provided, that with a written request any school corporation may place a permanent teacher on leave of absence for periods of not exceeding one year because of physical or other disability or illness. In such case such teacher shall have a right to a hearing on such matter to be held in accordance with the provisions for hearings contained in section 2 of this act."

The 1931 amendment substituted the words "school corporation" for "any school corporation" at the beginning of the section and in the first paragraph.

The 1971 amendment placed this section in its present form.

Cross-References. Leave to attend law, literature not to diminish rights, 29-6-2-3.

Teachers in national defense service, status of contract, 29-6-14-1; 29-6-14-2.

Opinions of Attorney-General. Public school teachers receive statutory seven days' leave in each year which may be accumulated to a total of sixty days. The school boards may grant sabbatical leaves and provide for proper voluntary or involuntary leave for proper cause which is in addition to the statutory leave, but which must be consistent with the salary schedule adopted by the school board and in force and effect, 1954, No. 41, p. 216.

Cited: *Joyce v. Harover Community School Corp.* (1971), — App. —, 24 Ind. Dec. 297, 296 N. E. (2d) 519.

Appendix A-10

Kentucky

161.770. Leaves of absence.—Upon written request of a teacher or superintendent, a board of education may grant a leave of absence for a period of not more than two (2) consecutive school years for educational or professional purposes, and shall grant such leave when illness, maternity or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. Without request, a board of education may grant similar leave of absence and renewals thereof to any teacher or superintendent because of physical or mental disability, but such teacher or superintendent shall have the right to a hearing on such unrequested leave of absence or its renewal in accordance with the provisions for hearing an appeal in KRS 161.780. Upon the return to service of a teacher or superintendent at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave. (Enact. Acts 1942, ch. 113, § 6; 1944, ch. 12.)

Opinions of Attorney General. It is not an abuse of discretion for the board of education to grant a leave of absence to a teacher who, while unable to perform his duties

because of illness, did not make a written request for leave until about 7 years after the time when the leave of absence was first requested.

and the superintendent orally of his board. OAG 60-122.

A local board of education may not grant a teacher leave of absence with salary on a noncompetitive basis by resolution on public education. OAG 61-172.

The provisions of this section concerning the granting of leave of absence for disability are mandatory and the board must grant the leave on written request. OAG 61-62.

A board of education has adequate authority to adopt regulations which would require teachers to submit to periodic physical examinations if it appears that they are physically unable to discharge their duties as a teacher. OAG 61-100.

The fact that a teacher has been ill for several years, is unable to perform his duties, is actually subject to board of education services does not entitle the teacher from requesting a leave of absence because of that disability. OAG 61-100.

The phrase "other disability" as used in this section means a serious disability which would be tantamount to the effective performance by a teacher of the full range of duties involved in the teaching assignments for which he is employed and the fact that a teacher is unable to perform satisfactorily in some other line of work which may be more sedentary and less strenuous, specifically having been elected to the office of county judge, would not in and of itself be conclusive as to lack of disability for teaching. OAG 61-100.

Maternity leave is not a "leave" within the meaning of KRS 161.770 but a "leave of absence" under this section and, as such, it results in a cessation of salary benefits during the period of absence. OAG 70-740.

Collateral References. 17 Am. Jur., Schools, §130.

78 C. J. S., Schools and School Districts, §172, 203.

PART X. LEAVES OF ABSENCE

SUB-PART A. SABBATICAL LEAVES

§ 1171. Eligibility for sabbatical leaves

Members of the teaching staff of public schools in all parishes and municipalities of the State of Louisiana shall be eligible for sabbatical leaves, for the purpose of professional or cultural improvement, or for the purpose of rest and recuperation, for the two semesters immediately following any twelve or more consecutive semesters of active service in the parish where the teacher is employed, or for the one semester immediately following any six or more consecutive semesters of service.

Absence on sick leave under Sub-part B of this Part shall not be deemed to interrupt the active service herein provided for.

History and Source of Law

Source:

Acts 1940, No. 319, § 1.
Acts 1946, No. 235, § 1.

The second paragraph of this section providing that absence on sick leave does not interrupt the running of the required period of active service, was added by the 1946 amendment.

Notes of Decisions

Construction and application 1
Discretion 3
Maternity leave 2
Separation from service 4
Sick and maternity leave 2
Temporary teachers 5

The pharmacy. Op. Atty. Gen. 1944-46, p. 880.

Aside from provisions of R.S. 17:1171 for sabbatical leave and R.S. 17:1201 for sick leave, parish school boards have full authority to act on application for leave, but if leave is granted the teacher remains an employee, and if a tenure teacher the tenure is unimpaired by absence on leave. Op. Atty. Gen. 1944-46, p. 876.

Library references

Schools and School Districts C-11173
C.J.S. Schools and School Districts § 218 et seq.

Teacher who took a voluntary leave of absence for a full semester, was not entitled to sabbatical leave immediately following leave of absence. Op. Atty. Gen. 1942-44, p. 1373.

1. Construction and application

A teacher employed for six consecutive semesters is entitled to sabbatical leave for one-half year. Op. Atty. Gen. 1940-42, p. 331.

A teacher, if employed in active teaching service in a parish for 12 or more consecutive semesters, would be entitled to apply for a sabbatical leave for two semesters. Op. Atty. Gen. 1940-42, p. 3435.

A school board cannot grant a teacher leave of absence without pay except for sabbatical leave, sick leave, maternity leave, and military leave. Op. Atty. Gen. 1952-54, p. 277.

Parish superintendents of education are not entitled to sabbatical leaves of absence under the provisions of R.S. 17:1171 et seq. Op. Atty. Gen. 1940-42, p. 3427.

Parish and city school boards are without authority to grant leaves to teachers except under provisions of the several acts on subject of leave. Op. Atty. Gen. 1946-48, p. 931.

2. Sick and maternity leave

Time spent by teacher in armed services should be considered as "consecutive" within meaning of this section, as regards right of teacher returned from armed services to sabbatical leave. Op. Atty. Gen. 1946-48, p. 920.

If a regularly employed teacher can qualify for maternity leave and is granted such leave, there is no prohibition against her requesting sabbatical leave, and if she is qualified for sabbatical leave, she may be granted sabbatical leave notwithstanding she has also been granted maternity leave. Op. Atty. Gen. 1948-50, p. 635.

The fact that teacher may be entitled to compensation under the GI Bill of Rights is not a bar to a sabbatical leave to which teacher may be entitled. Op. Atty. Gen. 1944-46, p. 891.

R.S. 17:1171 et seq., with respect to sabbatical leaves are not applicable to pregnancy, and teachers requiring leave of absence because of pregnancy are limited to their rights under R.S. 17:1201-17:1204 relating to sick leave. Op. Atty. Gen. 1944-46, p. 882.

Military leave may not be added to actual teaching service to make up period of service required as condition precedent to right of sabbatical leave. Id.

This section does not authorize leave of absence of expectant mothers. Op. Atty. Gen. 1944-46, p. 883.

A school board may grant leaves of absence to teachers only for purposes authorized by R.S. 17:1171-17:1186, 17:1201-17:1204, and could not grant leave of absence to a teacher who desired to manage her father's pharmacy while her brothers were in the armed forces and her father was also unable to manage it.

It is not proper for a school board to grant sabbatical leave or sick leave to married teachers because of pregnancy and childbirth. Op. Atty. Gen. 1942-44, p. 1385. - 126 -

Appendix A-11 *Annotations*

§ 1171.

The State Board and the State Superintendent of Education may authorize to exercise discretion as to the sabbatical leave to supervisors of schools. Op. Atty. Gen. 1942 p. 310.

4. Separation from service

Where teacher was involuntarily separated from active service and then was subsequently reinstated by school board, teacher would not lose any

rights which would have accrued during the period of involuntary separation to sabbatical leave and extension thereof. Op. Atty. Gen. 1946 p. 79.

5. Temporary teachers

A P.T.S. is entitled to a P.T. certificate does not enjoy the status of a "teacher" and accordingly would not be entitled to sabbatical leave. See also the case of *Op. Atty. Gen. 1946 p. 321*.

§ 1172. Applications for leave; time for filing

Applications for sabbatical leave shall be made on a form to be provided by the superintendent of school in the parish where the teacher is employed. Applications shall be sent to the superintendent by registered mail at least ninety days preceding the beginning of the first semester of the school year and not less than sixty days preceding the beginning of the second semester of the school year for which leave is requested, except that, where a teacher has become sick during a semester and requests sabbatical leave for the purpose of recuperating from such sickness, it shall be sufficient if the application is mailed thirty days before the date upon which the requested leave is to commence.

History and Source of Law

Source

Act 1941, No. 314, § 2.
Act 1942, No. 235, § 1.

The second sentence of this section, regarding the time limitation for filing applications for sabbatical leave, was re-enacted in the 1942 amendment on the following provision in the original

section: "Application shall be sent to the Superintendent by registered mail within the first thirty days of the semester immediately preceding the period for which leave is requested. However, applications for leave for the first semester of the 1940-41 session shall apply at any time prior to August 15, 1940."

Notes of Decisions

Construction and application: 1.
Extension or application: 2.
Estoppel and waiver: 4.
Time for application: 3.

1. Construction and application

Where teacher sought sabbatical leave for school year 1949-50, by proper applications to superintendent and Board of Education, and was refused, and through no fault of teacher, length of time necessary to obtain judgment in

at time teacher made his applications, and at time they were rejected, teacher was entitled under statute to leave for which he applied. *Id.*

The requirement that applications for sabbatical leave be sent to superintendent of schools by registered mail within first 90 days of preceding semester cannot be waived. Op. Atty. Gen. 1944-45, p. 891.

The provisions of this section requiring an applicant for sabbatical leave to make an application within the first 90 days of the semester immediately preceding the period for which leave is requested are mandatory. Op. Atty. Gen. 1949-50, p. 3413.

2. Time for application

A teacher is not deprived of right of sabbatical leave because of failure to apply within a fixed time after accrual of the right, and therefore teacher need not apply for such leave immediately

immediately preceding semester. Board overruled period of time for which leave is requested for such leave. Board would be entitled to grant teacher sabbatical leave as requested for school term of 1946-47. State ex rel. Scroggins v. Vernon Parish School Bd., App. 1950, 44 So.2d 352.

Where teacher sought sabbatical leave by right under statute and applications were personally given to superintendent who turned applications over to Board of Education, and not the teacher employed by Board was on sabbatical leave

after returning from military service. Op. Atty. Gen. 1944-45, p. 891.

3. Decision on application

An application for a sabbatical leave raises administrative questions which should be decided by parish school board and not by parish superintendent alone. Op. Atty. Gen. 1942-43, p. 1290.

4. Estoppel and waiver

Where teacher seeking sabbatical leave for one semester for cultural improvement, personally delivered applications to superintendent of schools of parish in which he taught, but did not send applications by registered mail. Board of Education after denying applications was estopped from raising question of failure to send applications by registered mail to superintendent of schools, and waived the right to make any such objection to applications. State ex rel. Scroggins v. Vernon Parish School Bd., App. 1950, 44 So.2d 352.

§ 1173. Method of selecting and order of preference among applicants

Whenever in accordance with the provisions of this Sub-part, some of the applications cannot be granted, from among those which would otherwise be granted, those to be granted, except as hereinafter specified, shall be determined in the following manner: preference in every case shall be given to the applicant who has rendered active service in the school system of the parish affected for the greatest number of consecutive semesters immediately preceding the period for which leave is requested, provided that where any two applicants rank equally in point of continuous service, preference in every case shall be given to the applicant who has rendered service in the school system for the greater total number of semesters; provided further, that where any two applicants rank equally both in point of continuous service and in point of total service, preference in every case shall be given to the applicant whose date of birth is earlier. Applicants whose applications are filed in the first thirty days of the semester shall be given a preference over those who seek sabbatical leave under the special provision relating to sickness during a school semester. Whenever, in accordance with the method of selection outlined herein, the quota established for leave for the purpose of rest and recuperation has been filled, all remaining applications shall be rejected and shall be disregarded in any further selection of applicants for that semester. Those whose applications are rejected have the right to reapply in any future semester.

History and Source of Law

Source:

Act 1909, No. 219, § 2;
Act 1918, No. 211, § 1.

The provision of this section granting preference to applicants who have filed their applications in the first 30 days of the semester over those who seek sab-

batical leave for reasons of sickness, was added by the 1946 amendment.

The 1946 amendment substituted the words "the quota established for" for the words "applications for" in the second and last sentence of this section.

Notes of Decisions

1. Construction and application

Where teacher sought sabbatical leave for school year 1949-50, by proper applications to superintendent and Board of Education, and was refused, and through no fault of teacher, length of time necessary to obtain judgment in

mandamus proceeding against Board overlapped period of time for which he applied for such leave, Board would be ordered to grant teacher sabbatical leave as requested for school term of 1949-51. State ex rel. Stiggins v. Vernon Parish School Bd., App. 1950, 44 So.2d 387.

§ 1174. Notification of grant or rejection of application

Every applicant shall be notified by the Superintendent in writing within sixty days after the final day for the filing of the application whether the application has been granted or rejected; where the application is for rest and recuperation from sickness the superintendent shall notify the applicant within thirty days from the date of the filing of the application whether the application has been granted or rejected. If the application has been rejected, the reasons for such rejection shall be specified.

History and Source of Law

Source:

Act 1909, No. 219, § 2;
Act 1918, No. 211, § 1.

The provision of this section requiring the superintendent to notify applicants,

who file for sabbatical leave for rest and recuperation, within thirty days of the time of filing of the application, was added by the 1948 amendment.

Notes of Decisions

1. Construction and application

Where teacher sought sabbatical leave for school year 1949-50, by proper applications to superintendent and Board of Education, and was refused, and through no fault of teacher, length of time necessary to obtain judgment in

mandamus proceeding against Board overlapped period of time for which he applied for such leave, Board would be ordered to grant teacher sabbatical leave as requested for school term of 1949-51. State ex rel. Stiggins v. Vernon Parish School Bd., App. 1950, 44 So.2d 385.

§ 1175. Information required in application; statements from physicians.

No person whose application for sabbatical leave has been granted shall be denied such leave. Every application shall specify:

- (1) the period for which leave is requested;
- (2) whether leave is requested for the purpose of professional or cultural improvement, or for the purpose of rest and recuperation;
- (3) the precise manner, in so far as possible, in which such leave, if granted, will be spent;
- (4) the semesters spent in active service in the parish school system from which leave is requested; and
- (5) the date of birth of applicant.

The application shall contain a statement, over the signature of the applicant, that he agrees to comply with the provisions of this Subpart.

Every application for sabbatical leave for the purpose of rest and recuperation shall be accompanied by statements from two physicians certifying that the health of the applicant is such that the granting of such leave would be proper and justifiable.

Source:

Acts 1940, No. 319, § 4.

Notes of Decisions

I. Construction and application

Where teacher sought Sabbatical leave for school year 1949-50, by proper applications to superintendent and Board of Education, and was refused, and through no fault of teacher, length of time necessary to obtain judgment on mandamus proceeding against Board overlapped period of time for which he applied for such leave, Board would be ordered to grant teacher Sabbatical leave

as requested for school term of 1949-50. State ex rel. Seagraves v. Vernon Parish School Bd., App. 1950, 44 So.2d 387.

Where teacher was involuntarily separated from active service and then was subsequently reinstated by school board, teacher would not lose any rights which would have accrued during period of involuntary separation to sabbatical leave and retirement benefits. Op. Atty. Gen., 1950, 28, p. 729.

§ 1176. Grounds for rejection of application

Any applicant who, at the expiration of the semester in which he applies, is ineligible for the sabbatical leave requested or who has not complied with the provisions of R.S. 17:1172 through 17:1174, shall have his or her application rejected, but all other applicants shall have their applications granted, provided that all leaves requested in such applications could be taken without violating the following provision: At no time during the school year shall the number of persons on sabbatical leave exceed five per centum of the total number of teachers employed in a given parish; in cases of sick leave this limit of five per centum may be exceeded.

Source:

Acts 1949, No. 319, § 5.

Acts 1948, No. 341, § 1.

Under the original section, "At no time during the school year beginning September 1, 1948, shall the number of persons on sabbatical leave exceed three per centum of the total number of teachers in the school system of the parish affected". However, "This maximum" was to be increased by one per centum each school year thereafter, provided

that it did not at any time "exceed five per centum". The original section also provided that "the number of those on leave for the purpose of rest and recuperation" should not at any time "exceed ten per centum of the total number of those on leave". In place of the above provisions, the 1948 amendment substituted the latter which presently appears subsequent to the colon in this section.

Notes of Decisions

I. Construction and application

Where Board of Education denied applications of teacher for sabbatical leave on grounds of an acute shortage of teachers, but made no showing that it did not have, and could not get any qualified substitute teachers, or show that any effort was made to get a substitute teacher, Court of Appeal would not take judicial cognizance of shortage

of school teachers, and Board's action would not be upheld. State ex rel. Seagraves v. Vernon Parish School Bd., App. 1950, 44 So.2d 387.

Sabbatical leave for rest and recuperation for teachers is limited to a percentage of the total number of teachers employed in a given parish. Op. Atty. Gen. 1950, 28, p. 519.

Appendix A-11 Louisiana

§ 1177. Manner in which leave may be spent

Every person on sabbatical leave for the purpose of rest and recuperation shall spend such leave in a manner calculated to attain that purpose.

Every person on sabbatical leave for the purpose of professional or cultural improvement shall, during each semester of leave:

(1) pursue a program of study, earning at least ten undergraduate, or six graduate, credit hours, at an institution of higher learning accredited by the board of education of the state or territory in which such institution is located, provided that in case less than fifteen weeks is so spent the number of weeks less than fifteen not so spent shall be spent in one or the other of the two alternatives below enumerated; or

(2) pursue a program of independent study, research, authorship or investigation which involved an approximately equivalent amount of work; or

(3) engage in travel which is so planned as to be of definite educational value.

Source:

Acts 1940, No. 319, § 6.

Notes of Decisions

1. Construction and application

Public school teacher on sabbatical leave may accept employment as member of faculty of educational institution, he attends without losing any rights under sabbatical leave statutes. Op. Atty Gen. 1940-41, p. 1361.

If a teacher attends an accredited college and will receive at least 10 undergraduate or 6 graduate credit hours, such work falls within the terms of the law relative to sabbatical leave. Op. Atty Gen. 1942-43, p. 1371.

A business course is not sufficient to entitle a teacher to a sabbatical leave unless the teacher earns at least 10 undergraduate or 6 graduate credit hours in an institution of higher learning ac-

credited by the Board of Education of the state or territory in which such institution is located. Op. Atty Gen. 1942-43, p. 1363.

Whether or not a correspondence course will be approved under sabbatical leave law as constituting a program of independent study, research, authorship, or investigation which involves an approximately equivalent amount of work as earning 10 undergraduate or 6 graduate credit hours in an approved institution of higher learning is a matter for consideration of parish school board. Id.

Requirements of law as to how teachers must spend their sabbatical leave stated. Op. Atty Gen. 1940-41, p. 1365.

§ 1178. Reports on manner of spending leave

Every person on sabbatical leave shall transmit to the superintendent within thirty days after the beginning of each semester of leave a written report of approximately one hundred words, of the manner in which such leave will be spent, and within thirty days after the end of such leave, a written report of approximately two hundred and fifty words, of the manner in which such leave has been spent. In case such person has elected to spend any semester in accordance with provisions of R.S. 17:1177(1), the initial report shall indicate the institution being attended and the number of credit hours being taken, and the final report shall be accompanied by official evidence that the number of credit hours required has been taken at the institution specified.

History and Source of Law

Source:

Acts 1940, No. 319, § 7.

Notes of Decisions

1. Construction and application

Teachers on sabbatical leave must comply with provisions of this section to receive benefits thereof. Op. Atty Gen. 1942-43, p. 1401.

Appendix A-11
Louisiana

R.S. 17:1179

EDUCATION

Ch. 2

§ 1179. Termination of leave

Any person who fails to comply with the provisions of R.S. 17:1177 and 17:1178 may have his leave terminated by the superintendent at any time, except where non-compliance is due to conditions which would have constituted sufficient grounds for failing to perform his duties had he been in active service.

Source:

Acts 1940, No. 319, § 8.

§ 1180. Sabbatical leave not to preclude salary increase

No person on sabbatical leave shall be denied the regular increment of increase in salary because of absence on sabbatical leave.

Source:

Acts 1940, No. 319, § 9.

Notes of Decisions

I. Construction and application

Act 413 of 1952, see note under R.S. 47:318, notes cost of living salary increases to teachers of parish and city schools or state-operated trade schools who are employed in the 1952-53 fiscal year and who were on sabbatical leave during the 1951-52 fiscal year. Op. Atty. Gen. 1952-54, p. 255.

A leave of absence on sabbatical leave should be counted as a year's experience towards salary increase of teachers. Op. Atty. Gen. 1948-50, p. 626.

Teacher on sabbatical leave is entitled to increase in base salaries of all public school teachers. Op. Atty. Gen. 1946-48, p. 920.

NOTES OF DECISIONS

Library references

Schools and School Districts 146.
C.J.S. Schools and School Districts 231-236.

I. In general

A person employed under a "T" certificate does not enjoy the status of a "teacher" and, accordingly, would not be entitled to sabbatical leave or any rights flowing therefrom. Op. Atty. Gen. 1950-52, p. 727.

§ 1181. Service on sabbatical leave as active service for retirement purposes

Service on sabbatical leave shall count as active service for the purpose of retirement and contributions to the retirement fund shall be continued.

Source:

Acts 1940, No. 319, § 10.

§ 1182. Return to same position

Every person on sabbatical leave shall be returned at the beginning of the semester immediately following such leave to the same position at the same school from which such leave was taken, unless otherwise agreed to by him.

History and Source of Law

Source:

Acts 1940, No. 319, § 11.

Notes of Decisions

I. In general

A teacher granted sabbatical leave at termination of said leave. Op. Atty. Gen. 1950-52, p. 331.

§ 1183. Rights of person on leave

Every person on sabbatical leave shall enjoy all the rights and privileges pertaining to his position and employment which he would have enjoyed had he not taken his leave but remained in active service in the schools in which he is employed.

History and Source of Law**Source:**

Acts 1940, No. 319, § 12.

Notes of Decisions**I. Construction and application**

Act 413 of 1952, see note under R.S. 47:318, gives credit of living salary increases to teachers of parish and city schools or state-operated trade schools who are employed in the 1952-53 fiscal year and who were on sabbatical leave

during the 1951-52 fiscal year. Op Atty. Gen., 1952-54, p. 255.

A leave of absence on sabbatical leave should be counted as a year's experience towards salary increase of teacher. Op Atty. Gen. 1948-50, p. 636.

§ 1184. Compensation while on leave

Each teacher granted sabbatical leave shall receive and be paid compensation at the rate of 50% of the minimum salary allowed a beginning teacher holding a bachelor's degree; provided, however, that any teacher on sabbatical leave may elect to be paid the difference between the salary he would have received during such leave if in active service in the position from which such leave is taken and the salary or compensation which a day by day substitute would receive during such leave, if assigned to that position; provided, further, that when a school board has fixed a rate of pay to be paid a day by day substitute teacher for each school day of teaching, the amount to be deducted from the pay of any teacher on sabbatical leave who elects to be paid under the option herein provided shall not exceed the amount so fixed, whether or not a different amount actually is paid to the substitute for the teacher on sabbatical leave. Any school board may pay such additional compensation to teachers on sabbatical leave as it may establish and fix. As amended Acts 1952, No. 186, § 1; Acts 1960, No. 585, § 1.

History and Source of Law**Source:**

Acts 1940, No. 319, § 13.
Acts 1948, No. 341, § 1.

Section 13 of the original act provided that a teacher on sabbatical leave should receive compensation equal to the difference between the salary he would have received if actively engaged in teaching during that period and the salary which a day-by-day substitute would receive. Section 13 also contained a proviso declaring that the "compensation for the teacher designated in place of the teacher or teachers on sabbatical leave shall not be less than the minimum salary paid to a beginning teacher, and the regular pay given substitutes for that parish." In place of these provisions in section 13 of the original act, the 1948 amendment substituted the matter which presently appears as this section.

The 1952 amendment added a proviso, now incorporated as the last sentence of this section, authorizing any parish school board to pay such additional compensation to teachers on sabbatical leave as it may establish and fix.

The 1960 amendment inserted the words "or compensation" after the words "and the salary" and before the words "which a day by day substitute would receive", and inserted the following proviso: "provided, further, that when a school board has fixed a rate of pay to be paid a day by day substitute teacher for each school day of teaching, the amount to be deducted from the pay of any teacher on sabbatical leave who elects to be paid under the option herein provided shall not exceed the amount so fixed, whether or not a different amount actually is paid to the substitute for the teacher on sabbatical leave."

Cross References

Minimum salary schedule, see R.S. 17:421.

Notes of Decisions

Construction and application 1
Failure to employ substitute 2
Military service 4
Other employment 3

Library references

Schools and School Districts 14474
C.J.S. Schools and School Districts
§ 224-227.

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Louisiana

Ch. 2

TEACHERS AND EMPLOYEES R.S. 17:1184

1. Construction and application

Teachers on sabbatical leave may elect to receive difference in salary she would have received if regularly employed at compensation which a day by day substitute would receive based upon pay schedule for substitute teacher, regardless of whether or not a different amount actually paid the substitute. Op. Atty. Gen. 1940-42, p. 3479.

Teaching salary should not be considered in computing the compensation to be paid a teacher on sabbatical leave. Op. Atty. Gen. 1940-42, p. 3481.

A teacher on sabbatical leave is entitled to receive 50 per cent of the compensation paid a beginning teacher with a bachelor's degree, unless the school board actually employs a day by day substitute for the position in question or unless the school board has adopted a schedule of compensation to be paid a day by day substitute teacher applicable to the position being vacated. Op. Atty. Gen. 1948-50, p. 658.

This section as originally enacted made it mandatory duty of a parish school board to pay to a teacher on sabbatical leave the difference between salary such teacher would have received had she continued in the service, and the salary which a day by day substitute would receive if assigned to the teaching position temporarily vacated by teacher on sabbatical leave. Op. Atty. Gen. 1946-48, p. 944.

Where salaries of teachers are paid in 10 monthly checks for nine months' term, substitute teacher for teacher on sabbatical leave is entitled to share in the 10th check. Op. Atty. Gen. 1946-48, p. 920.

Teacher on sabbatical leave is entitled to increase in base salaries of all public school teachers. Id.

Where teacher who had taught in second grade for a period of 18 years went on a sabbatical leave, and the division which she had been teaching was discontinued, compensation to be paid the teacher while on sabbatical leave would be the difference between her salary and minimum paid in the parish to second grade teachers. Op. Atty. Gen. 1942-44, p. 1372.

Part time employment of a teacher on sabbatical leave does not affect the leave or compensation provided all other requirements of the law are complied with. Op. Atty. Gen. 1940-42, p. 3458.

A teacher on sabbatical leave was entitled to the difference between a salary received in active service and the salary paid day by day substitute. Op. Atty. Gen. 1940-42, p. 3463.

Compensation payable to teachers on sabbatical leave and of teacher replacing one on such leave stated. Op. Atty. Gen. 1940-42, pages 3384, 3472.

Compensation of teachers on sabbatical leave stated. Op. Atty. Gen. 1940-42, pages 3384, 3471, 3473.

2. Failure to employ substitute

Failure of school board to employ day by day substitute does not deprive teacher on sabbatical leave of right to exercise option granted by this section. Op. Atty. Gen. 1948-50, p. 228.

Where teacher was granted sabbatical leave and substitute teacher was employed on nine-month basis, and was therefore entitled to minimum salary schedule as provided by R.S. 17:121, teacher on leave was entitled to exercise option granted by this section, to receive while on leave the difference between salary receivable if in active service and amount provided in school board schedule to be paid day by day substitute. Id.

A teacher granted sabbatical leave cannot be deprived of right to exercise option granted by this section. Id.

3. Other employment

A public school teacher while on sabbatical leave may accept other employment such as part time employment as an athletic coach by educational institution he is attending while on leave, but parish school board may determine whether his extra curricular duties while on leave are interfering with purpose for which leave is granted, and if so the leave may be cancelled. Op. Atty. Gen. 1944-46, p. 582.

Fact that a teacher on sabbatical leave is paid part time for services at college he is attending does not affect

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Louisiana

R.S. 17:1184

EDUCATION

Ch. 2

right to salary if the law is complied with. Op. Atty. Gen. 1940-42, p. 3403.

4. Military service

Parish school board may provide a substitute for a male teacher inducted into military forces, and for return to

his position upon completion of military service, and for payment of difference between regular teachers' and day-by-day substitute's salary, and State Board of Education may make general regulations therefor. Op. Atty. Gen. 1940-42, p. 1929.

§ 1185. - Payment of compensation to persons on leave

Compensation payable to persons on sabbatical leave shall be paid at the times at which salaries of the other members of the teaching staff are paid, and in the same manner.

History and Source of Law

Source:

Acts 1940, No. 319, § 14.

§ 1186. - Leave without pay: preservation of tenure rights

Parish and city school boards throughout the state may grant leaves of absence, without pay, for periods not exceeding one (1) year, to any regularly employed teacher or other employee, who requests such leave in writing, whenever in the discretion of the board such leaves in the best interests of the public school system. The granting of such leaves shall not affect any tenure rights which the applicant may have acquired prior thereto. Added Acts 1954, No. 647, § 1.

Library references: Schools and School Districts, C-12714; C.J.S. Schools and School Districts § 179.

R.S. 17:1186 added by Acts 1954, No. 647, § 1 as R.S. 17:1218 under a new Sub-Part heading entitled "Leave Without Pay". On the authority of R.S. 24:253, the Sub-Part heading has been eliminated and the Section renumbered R.S. 17:1186.

Maine

Ch. 15

SCHOOL COMMITTEE

20 § 473

9. Leaves of absence. For the purpose of increasing the efficiency of the public schools of the State, superintending school committees, boards of education and school directors shall have authority to grant to any teacher, principal or other person regularly employed by them a leave of absence for a period of not to exceed one year and on not more than half pay; such leave of absence to be granted only after 7 years of service and under such conditions and with such regulations as may be determined by the governing board, and for the purpose of permitting said teacher, principal or other person to pursue a further course of study or to travel, to the end that he or she may be better fitted by education and culture for his or her position in the schools;

1957, c. 361, § 26.

Appendix A-13

MASSACHUSETTS

§ 41A

ANNOTATED LAWS OF MASSACHUSETTS

C. 71

§ 41A. Leaves of Absence to Public School Teachers, etc., for Study, Research of Service with Professional Organizations.

A school committee may grant a leave of absence for study or research to any teacher, principal, supervisor, director, school librarian, superintendent or assistant superintendent, serving at discretion which would increase his professional ability, such leave to be for a period not exceeding one year at full or partial pay; provided, that prior to the granting of such leave he shall enter into a written agreement with the school committee that upon termination of such leave he will return to service in the public schools of such city or town for a period equal to twice the length of such leave and that, in default of completing such service, he will refund to the city or town an amount equal to such proportion of salary received by him while on leave as the amount of service not actually rendered as agreed bears to the whole amount of service agreed to be rendered. A school committee may also grant a leave of absence to any teacher, principal, supervisor or superintendent serving at discretion for service to a professional educational organization of which such teacher, principal, supervisor or superintendent is a member and has been elected to hold the office of president therein, such leave to be for a period not exceeding one year at full or partial pay; provided that such professional educational organization shall reimburse the school committee for any salary paid to said teacher, principal, supervisor or superintendent during such period. (1962, 277; 1967, 840, § 1; 1968, 136, approved April 8, 1968, effective 90 days thereafter.)

Editorial Note—

The 1967 amendment added the sentence authorizing leaves of absence for school teachers etc. for service to professional educational organizations.

The 1968 amendment rewrote the first sentence to authorize leaves of absence for school directors, librarians, superintendents, and assistant superintendents for study or research.

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Michigan

340.298f Employees; fringe benefits; sabbatical leave.

Sec. 298f. (1) The board of an intermediate school district, in the process of establishing salaries or determining other working conditions, may provide other related benefits of an economic nature on a joint participating or non-participating basis with intermediate district school employees. The benefits

may include but are not limited to health and accident insurance coverage, group life insurance, annuity contracts and reimbursement for credit hours earned during employment for professional improvement.

(2) Any board after a teacher has been employed at least 7 consecutive years by said board and at the end of each additional period of 7 or more consecutive years of employment may grant said teacher a sabbatical leave for professional improvement for not to exceed 2 semesters at any one time: Provided, That the teacher holds a permanent or life certificate. During said sabbatical leave, the teacher shall be considered to be in the employ of the said board, shall have a contract, and may be paid compensation as provided in the rules and regulations of said board: Provided, however, That said board shall not be held liable for death or injuries sustained by any teacher while on sabbatical leave.

HISTORY: Add 1972, p. 1062, Act 305, I.H. Mar. 30, 1973.

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Minnesota

15.15. SABBATICAL LEAVE FOR SCHOOL TEACHERS. Subdivision 1. A teacher who holds a certificate from the department and a contract for employment in a public school may be granted a sabbatical leave by the board employing such person under rules promulgated by such board.

Subd. 2. Any teacher who makes application for and accepts sabbatical leave shall agree that, upon the conclusion of said sabbatical leave, he shall return to his position for a period determined by the board before the leave is granted, or repay the district the portion of salary received while on sabbatical leave.

Subd. 3. Any teacher who has been granted a sabbatical leave shall retain all rights in the employing district as though teaching in that district.

Subd. 4. The term sabbatical leave, as used in this section, shall mean compensated leaves of absence granted for purposes of professional improvement or service.

[MINNESOTA STATUTES]

Mississippi

Education

#37-7-307. Leaves for teachers; substitute teachers.

The boards of trustees of school districts shall have the power and authority to fix and prescribe rules and regulations authorizing and providing for sick leaves for teachers employed in such school district for such reasonable periods of time as the board of trustees may deem proper. Said boards of trustees are further authorized and empowered to include in their budgets provisions for the payment of substitute teachers necessitated because of the absence of regular teachers as a result of sickness. All such substitute teachers shall be paid wholly from district funds other than minimum education program funds. Such boards of trustees are further authorized and empowered, in their discretion, to pay, from district funds other than minimum education program funds, the whole or any part of the salaries of teachers granted leaves for the purpose of special studies or training.

Sources: Codes, 1942, #6328-28; Laws, 1953, Ex Sess, ch. 17, #8, eff from and after July 1, 1954.

Research and Practice References--

- 47 Am Jur(1st ed), Schools # 123
- 78 CJS, Schools and School Districts # 195, 203.

Missouri

Retirement Systems

#169.300. Membership service--prior service credits--leaves of absence and military leaves

1. The board of trustees shall fix and determine by proper rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month's duration during which the member was absent without pay unless contributions are made as required by the board of trustees.
2. Under the rules and regulations that the board of trustees adopts, each member who was an employee on and prior to the date the retirement system becomes operative and who becomes a member within one year of such date shall file a detailed statement of all service as an employee for which he claims credit rendered by him prior to that date.
3. Subject to the above restrictions and to the other rules and regulations that the board of trustees adopts, the board of trustees shall verify the service claims as soon as practicable, after the filing of the statements of service.
4. Upon verification of the statements of service, the board of trustees shall issue prior service certificates, certifying to each member the length of prior service with which he is credited on the basis of his statement of service. So long as the holder of a certificate continues to be a member, a prior service certificate shall be final and conclusive for retirement purposes as to such service, provided, however, that any member may, within one year from the date of issuance or modification of the certificate, request the board of trustees to modify or correct his prior service certificate. When any employee ceases to be a member his prior service certificate becomes void, and if he again becomes a member he shall enter the retirement system as a member not entitled to prior service credit.
5. Membership service retirement shall include service as an employee rendered since last becoming a member.
6. Creditable service upon retirement shall consist of membership service, and if the member has a prior service certificate in full force and effect it shall include three-fourths of the service certified on his prior service certificate. Creditable service shall not exceed forty years for plan A members and thirty-five years for plan B members.

Missouri

7. The board of trustees shall adopt rules and regulations with respect to leaves of absence of members called to military, naval, or other national defense services and leaves of absence granted by the board of education for academic study or illness and shall allow as membership service upon retirement that part of the service which the board of trustees determines, provided, that for such period of membership service, the members shall make contributions as specified in subdivision (1) of subsection 1 of section 169.350 at the rate and salary which would have been in effect had he not been on leave. (L.1943 p. 787 # 4; L.1951 p. 477 # 2; L.1957 p. 396 # 1; L.1961 p. 369 # 1; L.1963 p. 348 # 1)

Mo.R.S.A. # 9577.44

Library references: Schools and School Districts (key)63(5); C.J.S. Schools and School Districts ## 118, 149, 150.

Historical Note

Subsection 1:

The 1961 reenactment added "unless contributions are made as required by the board of trustees" to the end of the subsection and substituted "employee" for "teacher."

Note: 169.300 applies only to school districts enrolling 400,000 to 700,000 pupils.

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Nebraska

79-1261. Every six years permanent teachers in a fourth or fifth class school district shall give such evidence of professional growth as is approved by the school board in order to remain eligible to the benefits of 79-1255 to 79-1262. Educational travel, professional publications, work on educational committee, six semester hours of college work, or such other activity approved by the school board, may be accepted as evidence of professional growth.

79-1262. Any school board in a fourth or fifth class school district, upon written request, may grant a leave of absence to a permanent teacher for study, military service, professional improvement, or because of physical disability or sickness, subject to such rules and regulations governing leaves of absence as may be adopted by the board. A school board may require a permanent teacher, because of physical disability or sickness, to take a leave of absence for a period not exceeding one year. In any such case, the procedure to be followed and the rights of the teacher shall be the same as those heretofore prescribed for cancellation of an indefinite contract.

Nevada

Personnel

#391.180 Payment of salaries of teachers, other employees; absences with compensation.

1. As used in this section, "employee" means a certificated or non-certificated employee of a school district in this state.

2. A school month in any public school in this state shall consist of 4 weeks of 5 days each, and, except as otherwise provided in this section, an employee thereof shall be paid only for the time in which he is actually engaged in services rendered the school district.

3. Nothing contained in this section shall prohibit the payment of employees' compensation in 12 equal monthly payments for 9 or more months' work.

4. The per diem deduction from the salary of an employee because of absence from service for reasons other than those specified in this section is that proportion of the yearly salary which is determined by the ratio between the duration of such absence and the total number of contracted work days in the year.

5. Boards of trustees shall prescribe such rules and regulations for sick leave, sabbatical leave, personal leave, professional leave, military leave and such other leave as they determine to be necessary or desirable for employees.

6. The salary of any employee unavoidably absent because of personal illness or accident, or because of serious illness, accident or death in the family, may be paid up to the number of days of sick leave accumulated by the individual employee. An employee shall not be credited with more than 15 days of sick leave in any 1 school year. Rules and regulations regarding accumulation of sick leave may be promulgated by boards of trustees. Accumulated sick leave up to a maximum of 30 days may be transferred from one school district to another.

7. Subject to the provisions of subsection 8:

(a) When an intermission of less than 6 days is ordered by the board of trustees for any good reason, no deduction of salary shall be made therefor.

(b) When on account of sickness, epidemic or other emergency in the community, a longer intermission is ordered by the board of trustees or by a duly constituted board of health and such intermission or closing does not exceed 30 days at any one time, there shall be no deduction or discontinuance of salaries.

Nevada

8. If the board of trustees orders an extension of the number of days of school to compensate for the days lost as the result of an intermission because of those reasons contained in paragraph (b) of subsection 7, an employee may be required to render his services to the school district during such compensatory extension period. If the salary of the employee was continued during the period of intermission as provided in subsection 7, the employee shall not be entitled to additional compensation for services rendered during the compensatory extension period.

340:32:1956-- (NRS A 1959, 205, 806; 1960, 31; 1965, 707; 1971, 648; 1973, 1292)

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New Jersey

ARTICLE 2. ADDITIONAL SICK LEAVE OR OTHER
LEAVES OF ABSENCE

18A:30-7. Power of boards of education to pay salaries

Nothing in this chapter shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave, or to grant sick leave over and above the minimum sick leave as defined in this chapter or allowing days to accumulate over and above those provided for in section 18A:30-2, except that no person shall be allowed to increase his total accumulation by more than 15 days in any one year.

Historical Note

Source: C. 18:13-23.12 (L.1954, c. 188, § 5, amended L.1956, c. 58, § 2; L.1958, c. 150).

Library References

Schools and School Districts
133.14, 144(5).

C.J.S. Schools and School Districts
§§ 179, 228.

77-8-20. Local sabbatical leave program authorized.—A local school board may, as part of its compensation plan, provide a program of sabbatical leave for members of its certified staff.

History: Laws 1969, ch. 116, § 1.

Title of Act.

An act relating to public schools; and providing for sabbatical leave under certain conditions.—Laws 1969, ch. 116.

77-8-21. Terms of sabbatical leave.—"Sabbatical leave" for the purposes of this act [77-8-20 to 77-8-24] means leave of absence with pay as set by the local school board during all or part of a regular school term for purposes of study or travel related to the staff member's duties and of direct benefit to the school program.

History: Laws 1969, ch. 116, § 2.

77-8-22. Approved program required for sabbatical leave.—Sabbatical leave may be granted only upon the presentation and approval by the state department of education of a full program of study or travel related to the staff member's duties and showing direct benefit to the school system.

History: Laws 1969, ch. 116, § 3.

77-8-23. Minimum conditions for sabbatical leave.—Any sabbatical leave program adopted by a local school district shall provide the following as minimum conditions:

A. only those certified employees who have completed at least six [6] years of continuous service in a certified capacity with the school district are eligible;

B. further sabbatical leave may be granted in the seventh year of service following a period of sabbatical leave under the same conditions as other sabbatical leaves are granted;

C. sabbatical leave shall be granted only upon agreement by the employee to return to the school system for at least two [2] years following the leave or repayment to the school district of the salary received during the period of leave. Such agreement shall be placed in a supplementary contract executed prior to authorization for the sabbatical leave.

D. the maximum term of any one [1] period of sabbatical leave shall be one [1] year;

E. the employee will be guaranteed an equivalent or better position upon return to the school system;

F. if regular salary increments for length of service are contained in the local school board's salary schedule, the period of leave will be counted as period of service in the computation of future length of service increments; and

G. the employee may continue his participation in the education retirement plan by making appropriate contributions as agreed by the local school board and the education retirement board.

History: Laws 1969, ch. 116, § 4.

77-8-24. Pay for sabbatical leave.—Sabbatical leave pay may be allowed in any amount up to one-half [$\frac{1}{2}$] of the employee's regular salary for the year immediately preceding the leave and payment shall be made by one [1] of the two [2] following methods:

A. one-half [$\frac{1}{2}$] to be paid at the end of the first year after return and one-half [$\frac{1}{2}$] at the end of the second year after return; or

B. during the term of the leave upon the furnishing of security satisfactory to the local school board assuring the employee's remaining in the system for two [2] years after the leave or repayment to the school district of the salary received during the period of leave.

History: Laws 1969, ch. 116, § 5.

New York #
§ 3005

EDUCATION LAW

T. S. C.

§ 3005. Leave of absence for teachers for teaching in foreign countries, other states and territories and other school districts [See, also, § 3005 above.]

The trustee, trustees or board of education of any school district may permit any teacher having had at least five years service in the school or schools of said district to apply for and receive a one-year leave of absence for teaching in the schools of a foreign country, other states of the United States or any of its territories or in any other school district within this state provided such foreign country, other state or territory or other school district shall have agreed to furnish a teacher of corresponding rank or school level to fulfill the duties of the said teacher on leave of absence. During the period of said leave of absence the said teacher shall receive from the school district the same compensation that he would have received had he been present and teaching in a school of the district. Such leave of absence shall not in any way affect the retirement rights of said teacher as a member of a retirement system and the period of the aforesaid leave of absence shall be credited to the total years of service of said member in the same manner and for all purposes as if he had not been granted said leave of absence and had been present within the district engaged in actual teaching service. Notwithstanding any of the provisions of this chapter, when the qualifications of the teacher from the foreign country, other state or territory or other school district have been approved by the commissioner of education, he shall be legally entitled to render instructional service in any public school in this state and a one-year permit for such service shall be issued by the commissioner of education without the payment of fee. Any school district employing a teacher under this section may supplement the salary received from the foreign country, other state or territory or other school district by said teacher.

L.1947, c. 820; amended L.1967, c. 446, eff. July 1, 1967.

Historical Note

L.1967, c. 446, eff. July 1, 1967, without incorporating changes made by L.1967, c. 282, § 2, among other changes, inserted "other states and territories and other school districts" in catchline; inserted "other states of the United States or any of its territories or in any other school district within this state"; and in three instances inserted "other state or territory or other school district".

New York

§ 3005-a. Leave of absence for teaching purposes

In a city of one million or more, a board of education may permit any teacher to apply for and receive a leave of absence

for a period not to exceed two years for teaching in a college or university, certificated and accredited by the commissioner of education, provided such college or university shall have agreed to furnish an educator of professional rank to fulfill the duties of the said teacher on leave of absence or any other duties assigned by the superintendent of schools. During the period of said leave of absence for teaching in a college or university, the said teacher shall receive from the school district in said city the same compensation that he would have received had he been present and teaching in a school of the district and the college educator if he is a member of a publicly operated college or system shall likewise receive the same compensation as he would have received had he remained in the college or university. Such leave of absence shall not in any way affect the retirement rights of the said teacher or college educator as a member of a retirement system and the period of the aforesaid leave of absence shall be credited to the total years of service of the said member in the same manner and for all purposes as if he had continued in his position. Notwithstanding any of the provisions of this chapter, nor any other local law or provision, the board of examiners shall have authority to issue to such college or university educator a special certificate of competency which shall be valid for a period not to exceed two years and not renewable and under which such college or university educator shall be permitted to fulfill the duties and assignments as herein provided.

Added L.1963, c. 886; amended L.1967, c. 282, § 3, eff. July 1, 1967.

***Historical Note**

L.1967, c. 282, § 3, eff. July 1, 1967, leave of absence for teaching in an accredited college or university provided for a possible two year

*Authority to grant sabbatical leave in New York has been regarded as an implied power of boards of education; the above statutes simply clarify a special case of sabbatical leave.

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OHIO

§ 3319.13 Leave of absence; request; employment of replacement.

Upon the written request of a teacher, or a regular nonteaching school employee, a board of education may grant a leave of absence for a period of not more than two consecutive school years for educational or professional or other purposes, and shall grant such leave where illness or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. Without request, a board may grant similar leave of absence and removal thereof to any teacher or regular nonteaching school employee because of physical or mental disability, but such teacher may have a hearing on such unrequested leave of absence or its renewal in accordance with section 3319.15 of the Revised Code, and such nonteaching school employee may have a hearing on such unrequested leave of absence or its renewals in accordance with division (C) of section 3319.081 [3319.08.1] of the Revised Code. Upon the return to service of a teacher or a nonteaching

school employee at the expiration of a leave of absence, he shall resume the contract status which he held prior to such leave. Any teacher who leaves a teaching position to serve in the armed services or the auxiliaries thereof organized to prosecute World War II, upon returning honorably discharged from such service, shall resume the contract status held prior to entering military service, subject to passing a physical examination. Such contract status shall be resumed at the first of the school semester or the beginning of the school year following return from the armed services. "Armed services" has the same meaning as defined in section 143.22 of the Revised Code.

Upon the return of a nonteaching school employee from a leave of absence, the board may terminate the employment of a person hired exclusively for the purpose of replacing the returning employee while he was on leave. If, after the return of a nonteaching employee from leave, the person employed exclusively for the purpose of replacing an employee while he was on leave is continued in employment as a regular nonteaching school employee or if he is hired by the board as a regular nonteaching school employee within a year after his employment as a replacement is terminated, he shall, for purposes of section 3319.081 [3319.08.1] of the Revised Code, receive credit for his length of service with the school district during such replacement period in the following manner:

(A) If employed as a replacement for less than twelve months, he shall be employed under a contract valid for a period equal to twelve months less the number of months employed as a replacement. At the end of such contract period, if the person is re-employed it shall be under a two year contract. Subsequent re-employment shall be pursuant to division (B) of section 3319.081 [3319.08.1] of the Revised Code.

(B) If employed as a replacement for twelve months or more but less than twenty-four months, he shall be employed under a contract valid for a period equal to twenty-four months less the number of months employed as a replacement. Subsequent re-employment shall be pursuant to division (B) of section 3319.081 [3319.08.1] of the Revised Code.

(C) If employed as a replacement for more than twenty-four months, he shall be employed pursuant to division (B) of section 3319.081 [3319.08.1] of the Revised Code.

For purposes of this section, employment during any part of a month shall count as employment during the entire month.

HISTORY: GC § 882.10; 120 v. 475 (5-2) (EF 10-1-53); 134 v. 570, EF 1-7-72.

For an analogous section, see former GC § 7690-1, 119 v. 451.

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OHIO

Discussion

For discussion of this section, see Drury Text § 6.25.

Cross-References to Related Sections

See RC §§ 3307.14, 3319.08.1 which refer to this section.

Research Aids

Leave of absence

O-Jur2d: Schools §§ 95, 137

Am-Jur: Schools § 123

CASE NOTES AND OAG

1. If a teacher has left his teaching position to serve in the armed services and has returned honorably discharged and, under authority of this section, desires to resume his teaching position, such condition constitutes good and just cause for the termination of the contract of a teacher who has been employed to perform the teaching duties which would have been performed by the absent teacher had he not entered the service: 1944 OAG No. 7076.

2. A county board of education is authorized by this section to grant a leave of absence to its superintendent for a period of not more than two school years, and may renew such leave at his request, but such board is without authority to pay such superintendent his salary while on such leave: 1945 OAG No. 440.

3. A school principal holding a continuing contract status and having on January 14, 1942, been granted a leave of absence, must within two years from the time of such grant, apply for and receive a renewal thereof, in order that he may after the expiration of such original leave claim the right to resume his contract status, as provided by this section: 1946 OAG No. 759.

4. A teacher having a continuing contract status in the elementary teaching field may, under RC §§ 4512-10 (RC §§ 3319.13), obtain a leave of absence, and upon return to teaching service at the expiration of such leave, shall resume the contract status which he held prior to such leave, including his seniority credit: 1952 OAG No. 1773.

§§ 3319.13.1] § 3319.131 Leaves of absence for professional improvement.

A public school teacher who has completed five years of service may, with the permission of the board of education and the superintendent of schools, be entitled to take a leave of absence with part pay, for one or two semesters subject to the following restrictions: The teacher shall present to the superintendent for approval, a plan for professional growth prior to such a grant of permission, and at the conclusion of the leave provide evidence that the plan was followed. The teacher may be required to return to the district at the end of the leave for a period of at least one year, unless the teacher has completed twenty-five years of teaching in this state.

The board of education may not grant such a leave unless there is available a satisfactory substitute, nor grant such leaves to more than five per cent of the professional staff at any one time, nor allow a part salary in excess of the difference between the substitute's pay and the teacher's expected salary, nor grant a leave longer than

one school year, nor grant a leave to any teacher more often than once for each five years of service, nor grant a leave a second time to the same individual when other members of the staff have filed a request for such a leave.

HISTORY: 127 v 105, § 1. Eff 9-6-57.

Cross-References to Related Sections

See RC § 3307.51 which refers to this section.

Research Aids

Leave of absence

O-Jur2d: Schools § 137

Am-Jur: Schools § 123

CASE NOTES AND OAG

1. A leave of absence with part pay may be granted under this section to a public school teacher who has completed five years of service; but such service must, by reason of RC § 3319.09, be actual service of not less than one hundred twenty days within a school year; therefore, a public school teacher who has had only three years of actual service as a teacher and two years of prior service in the armed services of the United States may not be granted a leave of absence and be paid a portion of his salary under this section: 1963 OAG No. 347.

Appendix A-24

PENNSYLVANIA

(F) SABBATICAL LEAVES OF ABSENCE

Library References

P.L.E. Schools § 154.

§ 11-1166. Persons entitled

(a) Any person employed in the public school system of the Commonwealth who has completed ten (10) years of satisfactory service

as a regular employe or member of the supervisory, instructional or administrative staff, or, in first class school districts, as a member of the instructional staff, as defined by the local board of education, shall be entitled to a leave of absence for restoration of health, study or travel, or, at the discretion of the board of school directors, for other purposes. At least five consecutive years of such service shall have been in the school district from which leave of absence is sought, unless the board of school directors shall in its discretion allow a shorter time. Such leave of absence shall be for a half or full school term or for two half school terms during a period of two years, at the option of such person. Provided, however, if a sabbatical leave is requested because of the illness of an employe, a leave shall be granted for a period equivalent to a half or full school term or equivalent to two half school terms during a period of two years. Provided further, That if a sabbatical leave for one half school term or its equivalent has been granted and the employe is unable to return to school service because of illness or physical disability, the employe, upon written request prior to the expiration of the original leave, shall be entitled to a further sabbatical leave for one half school term or its equivalent. Thereafter, one leave of absence shall be allowed after each seven years of service.

A sabbatical leave granted to a regular employe shall also operate as a leave of absence without pay from all other school activities. 1949, March 10, P.L. 30, art. XI, § 1166; 1951, Dec. 27, P.L. 1791, § 1; 1953, July 27, P.L. 629, § 4; 1953, July 29, P.L. 1004, § 1; 1955, Aug. 2, P.L. 298, § 1; 1957, June 6, P.L. 276, § 1.

Historical Note

Code of 1949: This section, as originally contained in the code, read:

"(a) Any person employed in the public school system of this Commonwealth who has completed ten (10) years of satisfactory service as a teacher, or, in first class school districts, as a member of the instructional staff or department of instruction, as now defined by the local board of education, shall be entitled to a leave of absence for restoration of health, study or travel, or, at the discretion of the board of school directors, for other purposes. At least five consecutive years of such service shall have been in the school district from which leave of absence is sought, unless the board of school directors shall in its discretion allow a shorter time. Such leave of absence shall be for a half or full school year, or for two half school terms during a period of two years, at the option of such person. Thereafter, one leave of absence shall be allowed after each seven years of service."

"A sabbatical leave granted to a regular employe shall also operate as a leave of absence without pay from all other school activities."

The second paragraph read the same as subd. (b), section 1216 of act of May 18, 1911, as last amended by act 1941, July 28, P.L. 562, § 1. The first paragraph was derived from subd. (a) of such section 1216, which read as follows: "(a) Whenever any person employed in the public school system of this Commonwealth shall have completed ten years of satisfactory service as a teacher, at least five consecutive years, or less, at the discretion of the board of school directors, of which service shall have been in the school district from which leave of absence is sought, or, in first class school districts, as a member of the instructional staff or department of instruction, as now defined by the local board of education, such person shall be entitled to a leave

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of absence for restoration of health, study or travel, or, at the discretion of the board of school directors, for other purposes, for a half or full school year, or for two half school years during a period of two years, at the option of such person. Thereafter, one leave of absence shall be allowed after each seven years of service."

The remaining subdivisions of section 1216 except subd. (k), which was omitted, were incorporated in sections 11-1167 to 11-1171 of this title.

Subd. (k) read: "(k) A member of the teaching or supervisory staff, while on sabbatical leave of absence, shall, for all purposes, be viewed in law as a full-time teacher, supervisor, principal or other full-time member of the teaching and supervisory staff, as the case may be, and while on sabbatical leave, he or she shall enjoy all the rights and privileges of an employee in regular full-time daily attendance in the position from which sabbatical leave of absence was granted, and during the period of said leave, the Commonwealth shall pay to the school district for each member of the teaching and supervisory staff thereof, who is on sabbatical leave of absence, the same per centum or share of salary provided for by law, as if the employee was in regular daily full-time attendance in the position from which the sabbatical leave of absence was taken, and in cases of employees of approved local or joint vocational, industrial vocational, home economics, and

vocational agricultural departments who are on sabbatical leave, the school district shall be reimbursed as provided by law, for each of such full-time salaries just as though such employees were in daily attendance upon their respective duties."

The 1951 amendment substituted "professional employee or member of the supervisory, instructional or administrative staff, or, in first class school districts, as a member of the instructional staff, as defined by the local board of education" for "teacher, or, in first class school districts, as a member of the instructional staff or department of instruction, as now defined by the local board of education".

The amendment of July 27, 1953, substituted "term" or "terms" for "year" or "years" and deleted the subsection designation "(a)".

The amendment of July 29, 1953, which did not refer to the prior 1953 amendment, made the same substitutions as did the prior 1953 but included the subsection designation "(a)".

The 1955 amendment inserted the first proviso.

The 1957 amendment inserted the second proviso.

Source: 1911, May 15, P.L. 299, § 1216(a, b); 1937, July 1, P.L. 2579, § 1; 1939, May 25, P.L. 216, § 1; 1941, July 25, P.L. 562, § 1.

Notes of Decisions

In general 1
Enforcement of right to leave 7
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Maternity leave generally 5
Study or travel 3
Time and duration 6
Years of service required 2

Library references

Schools and School Districts § 133.14.
C.J.S. Schools and School Districts § 173.

1. In general

The pendency of township school district teacher's application to township board of school directors for leave of absence when she was tried on charges of willful noncompliance with board's resolution requiring district's professional employees to establish residence within township by certain date did not

render her immune from dismissal or suspend operation of resolution, as such application required action by board. Appeal of Sinten, 35 A.2d 542, 151 Pa. Super. 233, 1944.

A school district has no authority to grant a leave of absence not chargeable as a break in a professional employee's seniority, except as specifically provided in the Public School Code. *McGurl v. Winton Borough School Dist.*, 82 D. & C. 578, 63 Lack. Jur. 253, 1953.

2. Years of service required

There was no legislative enactment under the terms of which a teacher could have a leave of absence so that he would be considered in regular full time daily attendance during the period of such leave for the purpose of determining his length of service to establish his seniority rights, except after ten years of satisfactory service as a

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*See also Education v. Board Dist. of
Luzerne Co., 3 Luz.L.J. 139, 1941.*

1. Study or travel

Teachers are entitled to sabbatical leave of absence to further pursue studies. *Matthews v. Scranton School Dist.*, 39 D. & C. 72, 1937.

4. Leaves for other purposes generally

Since legislature has been specific in matter of continuity of service with respect to sabbatical leaves, court may not read any power into other provisions of the Code whereby school officials may be permitted to authorize other types of leaves to carry continuous service credit as against seniority interest of other professional employees. *McGurl v. Winton Borough School Dist.*, 82 D. & C. 578, 53 Lack. Jur. 253, 1953.

5. Maternity leave generally

Where school board could grant teacher a maternity leave under "other purposes" clause of this section relating to sabbatical leave, and it appeared that board had disregarded its own rules regarding maternity leaves in granting to teacher a maternity leave, and where board had continued to make payments to retirement fund from back salary owed to teacher, it appeared that board had intended to grant teacher a sabbatical leave and she therefore did not forfeit her seniority rights during her leave of absence and her rights to position as teacher were superior to those of teachers retained by board who had lesser seniority rights. *Fisher v. Warakomski*, 112 A.2d 132, 381 Pa. 79, 1955.

Nine month maternity leave beginning in January was within time al-

lowed for sabbatical leave under this section. 13

A school board has discretion to determine whether a sabbatical leave of absence shall be granted for a maternity purpose. *Rowan v. Dupont Borough School Dist.*, 88 D. & C. 492, 44 Luz.L. Reg. 149, 1954.

Maternity leave may be considered within the "other purposes" as a ground upon which a sabbatical leave may be granted. *McGurl v. Winton Borough School Dist.*, 82 D. & C. 578, 53 Lack. Jur. 253, 1953.

6. Time and duration

While a school board may grant a maternity leave of absence under this section, any such leave must, in order to preserve the employee's seniority rights, be limited to the period of one full school year or two half school years during a period of two years as provided by that section, and any longer maternity leave of absence, even though taken with the board's consent, nullifies seniority rights. *Rowan v. Dupont Borough School Dist.*, 88 D. & C. 492, 44 Luz.L. Reg. 149, 1954.

Sabbatical leaves may not be cumulated; they must be taken upon the conditions and within the restrictions as to time provided by the Code. *McGurl v. Winton Borough School Dist.*, 82 D. & C. 578, 53 Lack. Jur. 253, 1953.

7. Enforcement of right to leave

Where petitioner for absence leave had ten years' consecutive service in district, a definite right to leave was bestowed, and mandamus would lie to compel directors to accede to request. *Catell v. Conyngham Twp. School Dist.*, 38 Luz.L. Reg. 9, 1945.

§ 11-1167. Preferences; limitations

Applications for leaves of absence shall be given preference, according to the years of service since the previous sabbatical leave of the applicant, and in accordance with regulations adopted by the board of school directors.

No school district shall limit the number of leaves of absence granted in any school year to less than ten per centum (10%) of the number of persons eligible for such leave of absence regularly employed in such district. Schools which have a staff of seven (7) or less teachers shall be permitted at least one leave of absence each term. 1949, March 10, P.L. 30, art. XI, § 1167; 1953, July 27, P.L. 629, § 5.

Library references: *Schools and School Districts* § 172; C.J.S. *Schools and School Districts* § 172.

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§ 11-1167. PUBLIC SCHOOL CODE OF 1949 *Pennsylvania*

Historical Note

Code of 1949: The 1953 amendment substituted "term" for "year" at end of last sentence. 1939, May 25, P.L. 216, § 1; 1941, July 28, P.L. 562, § 1, without substantial change in 1949.

Source: 1911, May 18, P.L. 309, § 1216(c, f); 1937, July 1, P.L. 2579, § 1; See Historical Note of section 11-1166 of this title.

§ 11-1168. Return to employment

No leave of absence shall be granted unless such person shall agree to return to his or her employment with the school district for a period of not less than one school term immediately following such leave of absence.

No such leave of absence shall be considered a termination or breach of the contract of employment, and the person on leave of absence shall be returned to the same position in the same school or schools he or she occupied prior thereto.

Upon expiration of a sabbatical leave, by consent of the school board, the requirement that the person on leave of absence shall return to the service of the school district or to the same position in the same school or schools that he or she occupied prior thereto, may be waived. If the school board has not waived the obligation to return to school service upon expiration of the sabbatical leave and the employe fails to do so, unless prevented by illness or physical disability, the employe shall forfeit all benefits to which said employe would have been entitled under the provisions of this act for the period of the sabbatical leave.

If such employe resigns or fails to return to his employment, unless the requirement to return to service is waived by the board of school directors, the amount contributed by the school district under section 1170 of this act¹ to the Public² School Employees' Retirement Fund shall be deducted from the refund payable to such employe under existing law and the amount so deducted shall be refunded to the school district by which it was paid. 1949, March 10, P.L. 30, art. XI, § 1168; 1953, July 27, P.L. 629, § 5; 1959, Sept. 29, P.L. 999, No. 412, § 1.

¹ Section 11-1170 of this title.

² Enrolled bill omitted "Public".

Historical Note

Code of 1949: Substituted "returned to the same position" for "returned to the same or positions". first paragraph and added the third and fourth paragraphs.

The 1953 amendment substituted "school term" for "year" in the first sentence. Source: 1911, May 18, P.L. 309, § 1216(b, c); 1937, July 1, P.L. 2579, § 1; 1939, May 25, P.L. 216, § 1; 1941, July 28, P.L. 562, § 1.

The 1959 amendment substituted "immediately following" for "after" in the See Historical Note under section 11-1166 of this title.

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Notes of Decisions

In general 1
Application for leave 2
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ton v. School Dist. of Felt Tp., 21 D. & C.2d 652, 61 Lack Jur. 153, 1961.

2. Application for leave

An application by a teacher for a sabbatical leave, which, although not containing an agreement to return, indicated very clearly that the leave sought was only for the coming school term and that she intended to return at the beginning of the next school year, was sufficient. *Dessoye v. Pittston Tp. School Bd.*, 45 Luz.L.Reg. 27, 1956.

3. Estoppel

Where teacher was granted three one-year leaves of absence in order that teacher might work as chemist during war, and was suspended in 1952 because of decrease in school enrollment, and reinstatement of teacher would involve suspension of second teacher, doctrine of estoppel could not apply against school district, in action by teacher for reinstatement, in view of fact that rights of second teacher were involved. *Halko v. Board of Directors of School Dist. of Foster Tp.*, 97 A.2d 195, 274 Pa. 205, 1953.

Library references

Schools and School Districts C-133.14.
C.J.S. Schools and School Districts § 179.

1. In general

Leaves of absence from professional employment for one school year granted school teachers who had completed 10 years or more of satisfactory service were sabbatical leaves, thereby enabling recipients thereof to retain their seniority status under section 1-101 et seq. of this title, even though employees stated no reason in their leave requests, authorities did not regard leaves as sabbatical, employees received no pay during their leave period, they signed no formal agreement to return at end of their leave time, and there was no evidence that school district paid anything into state retirement fund for teachers concerned during their leaves. *Thorn-*

§ 11-1169. Salary while on leave

The person on leave of absence shall receive one-half of his or her regular salary but not more than three thousand dollars (\$3000), if the employee's absence on sabbatical leave is for a full school term and not more than one thousand five hundred dollars (\$1500), if the employee's absence on sabbatical leave is for a half school term, as defined in this act.¹ 1949, March 10, P.L. 30, art. XI, § 1169; 1951, Dec. 27, P.L. 1791, § 1; 1953, July 27, P.L. 629, § 6; 1953, Aug. 19, P.L. 1105, § 1; 1957, June 6, P.L. 276, § 1; 1959, Sept. 29, P.L. 999, No. 412, § 2.

¹ Section 1-101 et seq. of this title.

Historical Note

Code of 1949: As originally contained in the code, this section read: "The person on leave of absence shall receive the difference between his or her regular salary and the salary paid to any substitute employee temporarily engaged because of such leave: Provided, That the employee who is absent on sabbatical leave shall not receive more than one thousand six hundred dollars (\$1600), if the employee's absence on sabbatical leave is for a full year, and

not more than eight hundred dollars (\$800), if the employee's absence on sabbatical leave is for a half school year, as defined in this act. The salary paid to such substitute shall be the salary for substitute service, according to the salary schedule established by the local board."

The 1951 amendment substituted "one-half of" for "the difference between", deleted "and the salary paid to any substitute employee temporarily

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engaged because of such leave", substituted \$2500 for \$1600 and \$1250 for \$800, and deleted the last sentence.

The amendment of July 27, 1953, substituted "term" for "year".

The amendment of August 19, 1953, which did not refer to the prior 1953 amendment, substituted "but not" for "": Provided, That the employee who is absent on sabbatical leave shall not receive" and added a provision permitting a school district to pay a teacher on leave any salary which, when added to any grant received by the teacher for a fellowship or from a foundation, would not make the total exceed the salary payable during the year of leave.

The 1957 amendment, which referred to both of the 1953 amendments, substituted \$3000 for \$2500 and \$1500 for \$1250, and modified the provision added on August 19, 1953, so that a teacher receiving a grant could not be paid more than the amount otherwise prescribed for payment to persons on leave.

The 1959 amendment gave this section its present form by deleting all but the first sentence.

Source: 1911, May 13, P.L. 309, § 1216 (d); 1937, July 1, P.L. 2579, § 1; 1939, May 25, P.L. 216, § 1; 1941, July 23, P.L. 552, § 1, without change in 1949.

See Historical Note under section 11-1166 of this title.

Notes of Decisions

Construction and application 1
Waiver of salary 2

Library references

Schools and School Districts § 133.14.
C.J.S. Schools and School Districts § 179.

1. Construction and application

In employing a teacher for a year during sabbatical leave of a regular teacher school board was bound by act 1911, May 13, P.L. 309, § 1216, as amended, prescribing minimum salaries. *Ulmer v. Honesdale Union School Dist.*, 51 D. & C. 261, 1945.

Where salary of teacher on sabbatical leave was \$1,700 a year and a substitute employed to fill his position temporarily

was paid \$1,600 a year, teacher on sabbatical leave was entitled to only \$100, notwithstanding fact that only schedule for substitute teachers adopted at time sabbatical leave was granted was \$5 a day for teachers temporarily employed during short absence of regular teachers and a schedule for salaries of substitutes taking place of teachers on sabbatical leave was not adopted until after sabbatical leave was granted, but before teacher had begun his sabbatical leave. *Id.*

2. Waiver of salary

Teacher could waive the payment under this section, and leave granted to teacher could be sabbatical leave, even though teacher received no pay during absence. *Fisher v. Warakowski*, 112 A. 2d 122, 381 Pa. 73, 1955.

§ 11-1170. Rights retained

Every employee, while on sabbatical leave of absence, shall be considered to be in regular full-time daily attendance in the position from which the sabbatical leave was taken, during the period of said leave, for the purpose of determining the employee's length of service and the right to receive increments, as provided by law.

Every person on leave of absence shall continue his or her membership in the School Employees' Retirement Association. The school district shall pay into the School Employees' Retirement Fund on behalf of each such employee on leave, in addition to the contributions required by law to be made by it, the full amount of the contribution required by law to be paid by the employee, as though said employee were actually in regular full-time daily attendance in the position from which the sabbatical leave was taken.

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leave was taken, so that such employee's retirement rights shall be in no way affected by such leave of absence. The amount of the contribution required to be paid by the employee shall be deducted from any compensation payable to the employee while on leave.

Nothing in this subdivision of this article shall be construed to prevent any person on leave of absence from receiving a grant for further study from any institution of learning. 1949, March 10, P.L. 30, art. XI, § 1170; 1953, July 29, P.L. 1004, § 2.

Historical Note

Code of 1949: The 1953 amendment substituted "continue his or her membership . . . while on leave" for "retain the right to make contributions as a member of the School Employees' Retirement Fund and continue his or her membership therein" in the second paragraph.

Source: 1911, May 18, P.L. 359, § 1216 (g, h, j); 1937, July 1, P.L. 2579, § 1; 1939, May 25, P.L. 216, § 1; 1941, July 28, P.L. 562, § 1, without change in 1949.

See Historical Note under section 11-1166 of this title.

Cross References

Teachers' and employees' retirement funds, see sections 2081 et seq. of this title.

Notes of Decisions

Estoppel 3
Retirement fund payments 2
Seniority 1

Library references

Schools and School Districts 133.14.
C.J.S. Schools and School Districts § 179.

1. Seniority

Under School Code providing that teacher having completed 10 years service shall be entitled to leave of absence for a half or full school year and, thereafter, one leave of absence shall be allowed only after each 7 years of service, where teacher who had 12 years of continuous, uninterrupted service took leave of absence in 1942, and leave of absence was extended for next succeeding two years, teacher's seniority rights began only from when he was re-employed in 1946. *Halko v. Board of Directors of School Dist. of Foster Tp.*, 97 A.2d 793, 374 Pa. 269, 1955.

Leaves of absence from professional employment for one school year granted school teachers who had completed 10 years or more of satisfactory service with sabbatical leaves, thereby enabling recipients thereof to retain their

seniority status under section 7-101 et seq. of this title, even though employees stated no reason in their leave requests, authorities did not regard leaves as sabbatical, employees received no pay during their leave period, they signed no formal agreement to return at end of their leave time, and there was no evidence that school district paid anything into state retirement fund for teachers concerned during their leaves. *Thornton v. School Dist. of Fell Tp.*, 21 D. & C.2d 672, 61 Lack.Jur. 153, 1961.

Seniority is not lost because no part of a teacher's pay is given to her during a sabbatical leave, when a substitute hired in her place is paid the same salary to which the teacher was entitled. *Dessoye v. Pittston Tp. School Bd.*, 45 Luz.L.Reg. 227, 1956.

A teacher who was granted a sabbatical leave for maternity reasons does not lose her seniority where the school board of the district with which she has a contract has not adopted any regulations permitting and governing leaves of absence for that purpose. *Id.*

2. Retirement fund payments

Where school board could grant teacher a maternity leave under "other purposes" clause of section 11-1166 of this title, relating to sabbatical leave,

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and it appeared that board had disregarded its own rules regarding maternity leaves in granting to teacher a maternity leave, and where board had continued to make payments to retirement fund from back salary owed to teacher, it appeared that board had intended to grant teacher a sabbatical leave and she therefore did not forfeit her seniority rights during her leave of absence and her rights to position as teacher were superior to those of teachers retained by board who had lesser seniority rights. *Fisher v. Warakomski*, 112 A.2d 132, 381 Pa. 79, 1955.

Failure of a teacher to make contributions to the School Employees' Retirement Fund while on sabbatical leave does not affect her vested rights,

since the school code merely gives a teacher the right to make contributions, if desired. *Bessoye v. Pittston Tp. School Bd.*, 45 Luz.L.Reg. 227, 1954.

§. Estoppel

Where teacher was granted three one-year leaves of absence in order that teacher might work as chemist during war, was suspended in 1952 because of decrease in school enrollment and reinstatement of teacher would involve suspension of second teacher, doctrine of estoppel could not apply against school district, in action by teacher for reinstatement, in view of fact that rights of second teacher were involved. *Malke v. Board of Directors of School Dist. of Foster Tp.*, 97 A.2d 793, 374 Pa. 269, 1953.

§ 11-1171. Regulations

The board of school directors shall have the right to make such regulations as they may deem necessary to make sure that employes on leave shall utilize such leave properly for the purpose for which it was granted, requiring reports from the employe or employes on leave in such manner as they may deem necessary. 1949, March 10, P.L. 30, art. XI, § 1171.

Historical Note

Code of 1949: Deleted "or board of public education" following "board of school directors".

Source: 1911, May 18, P.L. 309, § 1216 (1); 1937, July 1, P.L. 2579, § 1; 1939,

May 25, P.L. 216, § 1; 1941, July 28, P.L. 562, § 1.

See Historical Note under section 11-1166 of this title.

Notes of Decisions

Library references.

Schools and School Districts § 133.14.
C.J.S. Schools and School Districts § 179.

1. Maternity regulations

A school teacher enjoying sabbatical leave was as much a "professional employee" of the school district as if in full-time daily attendance upon her regular duties, so that she was subject to reasonable maternity regulations adopted by the school board. *Board of*

School Directors of Ambridge Borough School District, Beaver County, v. Snyder, 29 A.2d 34, 346 Pa. 103, 1943.

Where school board had adopted maternity regulations providing for leave of absence for minimum period of two years, even if teacher had no knowledge of her pregnancy at time she applied for one-year sabbatical leave or even at time it was granted, she had duty to notify school board of her changed status and apply for maternity leave in accordance with the regulations. *Id.*

Tennessee

49-1314. Personal and professional leave—Sick leave—Accumulation—Substitute teacher.—The state board of education shall adopt rules and regulations setting up a system of sick leave and personal and professional leave for the teachers in the public schools of Tennessee, and for payment of substitute teachers. The regularly employed teacher who is on leave authorized by this section shall receive his pay prescribed by his contract during his absence, but the right to receive such pay shall be subject to all the conditions set forth in this section.

The time allowed for sick leave within the meaning of this section for any teacher shall be one (1) day for each month employed. Sick leave shall be cumulative for all earned days not used in an amount not to exceed one hundred twenty (120) days for any individual. Upon

written request of the teacher accompanied by a statement from her physician verifying pregnancy, any teacher who goes on maternity leave after June 30, 1974, shall be allowed to use all or a portion of her accumulated sick leave for maternity leave purposes for a period not to exceed the teacher's accumulated sick leave balance or thirty (30) working days, whichever is less. When a teacher is first employed in a system, he shall be allowed an initial allotment of up to five (5) days of sick leave, but not exceeding the number he could earn during the school year in which he is first employed. If a teacher uses a part or all of this initial allotment, these days shall be charged to sick leave later accumulated by the same teacher. At the termination of the employment of any teacher, all unused sick leave accumulated by the said teacher shall be terminated. However, a local board of education shall grant to any teacher upon his employment or reemployment the accumulated sick leave which the teacher lost by previous termination of employment in a public school system of this state, except that if a teacher is terminated for cause as defined in § 49-1401, he shall not be granted, upon his further employment, the sick leave days lost; and except that a teacher who breaks a contract with a board of education without a justifiable reason and without giving at least thirty (30) days' advance notice shall be granted his accumulated, unused leave only if the board whose employ he left permits him to resign in good standing under the terms of § 49-1408. This grant of previously accumulated, unused sick leave days shall be made only upon application of the teacher, only upon written verification notarized by the superintendent and chairman of the board of education of the system in which the accumulated sick leave was held, and only if the teacher is again employed not later than two (2) school years following the termination which resulted in the loss of his unused, accumulated sick leave. Every local board of education shall keep a record of the accumulated sick leave for each eligible teacher in its employ and shall provide a verified copy to the teacher or other board of education for purposes of implementing this section. The local board of education may require that a physician's certificate be furnished by the teacher in all cases deemed proper by the local board. In case of doubt, the local board of education shall have final authority as to who is entitled to leave under this section and the time for which the leave may be allowed.

Under policies adopted by the local board of education, a teacher shall be allowed personal and professional leave earned at the rate of one (1) day for each half year employed, which shall not accumulate from year to year. A teacher may take not more than two (2) days of personal or professional leave prior to having earned it, but it shall be charged against his year's allowance.

If at the termination of his services any teacher has been absent for more days than he had accumulated or earned leave, there shall be deducted from the final salary warrant of such teacher an amount sufficient to cover the excess days used by him.

Substitute teachers are those teachers used to replace teachers on leave authorized by this section or to fill temporary vacancies as defined by the state board of education and granted under written local school board policies. All substitute teachers shall be employed and paid by the board of education of the school system in which such substitute teachers are used.

The state board of education shall prescribe forms and procedures to be followed by the local boards of education participating in the state leave plan. The state commissioner of education may withhold state leave funds from any participating system which fails to comply with the provisions of this section or the implementing rules and regulations of the state board of education. [Acts 1955, ch. 136, § 18; 1957, ch. 75, § 1; 1959, ch. 93, § 1; 1967, ch. 396, § 1; 1968 (Adj. S.), ch. 429, §§ 1, 2; 1971, ch. 128, § 1; 1971, ch. 421, § 1; 1973, ch. 2, § 1; 1974 (Adj. S.), ch. 488, § 1.]

Amendments. The 1973 amendment substituted the present third and fourth sentences of the second paragraph for the former third sentence which read: "When a teacher is first employed in a system, he shall be allowed an initial allotment of five (5) days of sick leave; but if a teacher uses a part or all of this initial allotment, these days shall be charged to sick leave later accumulated by the same teacher."

The 1974 amendment inserted the third sentence of the second paragraph regarding maternity leave.

Effective Dates. Acts 1973, ch. 2, § 2.

March 12, 1973.

Acts 1974 (Adj. S.), ch. 488, § 2. July 1, 1974.

Section to Section Reference. This section is referred to in §§ 8-3904, 49-602.

49-1315. Leave of absence—Procedure.—Any person holding a position which requires a teacher's certificate shall be granted leave for military service, maternity, adoption, or recuperation of health and may be granted leave for educational improvements or other sufficient reason without forfeiture of accumulated leave credits, tenure status, or other fringe benefits. All leaves shall be requested in writing at least thirty (30) days in advance on forms adopted by the local board of education and uniformly used throughout the school system. The thirty (30) day notice may be waived or reduced by the local board or upon a certified statement of a physician approved by the local board of education. The teacher's application for leave forms shall require, but not be limited to (a) a description of the type of leave requested; (b) the requested dates for beginning and ending the leave; and (c) a statement of intent to return to the position from which leave is granted.

Each request for leave must be acted upon by the local board of education at the next regular board meeting with such action to become a part of the official minutes. Each applicant shall be notified in writing of the action of the board, and the beginning and ending dates of the leave which is granted. All leaves, except military leave, shall be from a date certain to a date certain; however, any leave may be extended to a later specified date upon written request from the teacher. The procedure for extending a leave and the conditions under which a leave may be extended are the same as those used when originally requesting and granting the leave. Military leave shall be granted for whatever period may be required.

Positions vacated for less than twelve (12) months by teacher leave shall be filled with an interim teacher for such time as the teacher is on leave. Upon return of said teacher within the twelve (12) months the interim teacher shall relinquish the position and the teacher return thereto. If the leave exceeds twelve (12) months, the teacher shall be placed in the same or a comparable position upon return to leave.

Part-time leaves may be granted upon written request with the conditions prevailing as recorded in the minutes of the board of education.

Any teacher on leave shall, at least thirty (30) days prior to date of return, notify the superintendent in writing if said teacher not intend to return to the position from which she is on leave. Failure to render such notice may be considered breach of contract. [Acts 1975, § 1.]

Compiler's Note. The former section was transferred to § 49-1318.

Effective Date. Acts 1973, ch. 173 July 1, 1973.

Texas

Public Schools

Title 2

21.910. Developmental Leaves of Absence

Text as added by Acts 1971, 62nd Leg., p. 2727, ch. 888, # 1

(a) In this section, "teacher" means an employee of a school district who is employed in a position requiring a permanent teaching certificate under the laws of this State.

(b) The governing board of a school district may grant a developmental leave of absence for study, research, travel, or other suitable purpose to a teacher who has served in the same school district at least five consecutive school years.

(c) The governing board may grant a teacher a developmental leave of absence for one school year at one-half of his regular salary or for one-half of a school year at his full regular salary. Payment to the teacher shall be made periodically by the school district in the same manner, on the same schedule, and with the same deductions as if the teacher were on full time duty.

(d) The State Board of Education by regulation shall establish a procedure whereby applications for developmental leave are received and evaluated by the governing board of a school district and shall determine an equitable ratio of classroom teachers to other certified personnel who may be granted leave over a period of time.

(e) A teacher on developmental leave shall continue to be a member of the Teacher Retirement System of Texas and shall be a teacher of the school district for purposes of participating in programs, holding memberships, and receiving benefits afforded by his employment in the school district.

Added by Acts 1971, 62nd Leg., p. 2727, ch. 888 # 1, eff. Aug. 30, 1971.

For text as added by Acts 1971, 62nd Leg., p. 3010, ch. 994, #9, see section 21.910, post.

Historical Note

Title of Act:

An Act relating to developmental leaves of absence for professional public school personnel; amending Subchapter 7 Chapter 21, Texas Education Code by adding Section 21.910; and declaring an emergency. Acts 1971, 62nd Leg., p. 2727, ch. 888.

Cross References: Higher education, faculty development leaves of absence, see # 51.101 et seq.

Library References: Schools and School Districts #19(1), 133.13
C.J.S. Schools and School Districts # 19, 21, 179

Washington

School Districts

28A.58.100 Directors--Hiring and discharging employees
--Leaves for employees--Seniority and leave benefits, retention
upon transfers between schools. Every board of directors, unless
otherwise specially provided by law, shall:

(1) Employ for not more than one year, and for sufficient
cause discharge all certificated and noncertificated employees,
and fix, alter, allow and order paid their salaries and compen-
sation;

(2) Adopt written policies granting leaves to persons under
contracts of employment with the school district(s) in positions
requiring either certification or noncertification qualifications,
including but not limited to leaves for attendance at official or
private institutes and conferences and sabbatical leaves for em-
ployees in positions requiring certification qualification, and
leaves for illness, injury, bereavement and emergencies for both
certificated and noncertificated employees, and with such com-
pensation as the board of directors prescribe: Provided, That
the board of directors shall adopt written policies granting to
such persons annual leave with compensation for illness and in-
jury as follows:

(a) For such persons under contract with the school district
for a full year, at least ten days;

(b) For such persons under contract with the school district
as part time employees, at least that portion of ten days as the
total number of days contracted for bears to one hundred eighty
days;

(c) Compensation for leave for illness or injury actually tak-
en shall be the same as the compensation such person would have
received had such person not taken the leave provided in this
proviso;

(d) Leave provided in this proviso not taken shall accumulate
from year to year up to a maximum of one hundred eighty days,
and such accumulated time may be taken at any time during the
school year;

(e) Sick leave heretofore accumulated under section 1, chap-
ter 195, Laws of 1959 (former RCW 28.58.430) and sick leave
accumulated under administrative practice of school districts
prior to the effective date of section 1, chapter 195, Laws of 1959
(former RCW 28.58.430) is hereby declared valid, and shall be
added to leave for illness or injury accumulated under this pro-
viso.

Washington

(f) Accumulated leave under this proviso not taken at the time such person retires or ceases to be employed in the public schools shall not be compensable;

(g) Accumulated leave under this proviso shall be transferred to and from one district to another, the office of superintendent of public instruction and offices of county and intermediate district superintendents and boards of education, to and from such districts and such offices;

(h) Leave accumulated by a person in a district prior to leaving said district may, under rules and regulations of the board be granted to such person when he returns to the employment of the district.

When any teacher or other certificated employee leaves one school district within the state and commences employment with another school district within the state, he shall retain the same seniority, leave benefits and other benefits that he had in his previous position. If the school district to which the person transfers has a different system for computing seniority, leave benefits and other benefits, then the employee shall be granted the same seniority, leave benefits and other benefits as a person in that district who has similar occupational status and total years of service.

WEST VIRGINIA

§ 18-2-12. Sabbatical leaves.

The state board of education shall have authority to grant sabbatical leaves to faculty members at the educational institutions under its control for the purpose of permitting them to engage in graduate study, research or other activities calculated to improve their teaching ability. Such leaves shall be granted only in conformity with a uniform plan adopted by the board and shall be subject to such reasonable rules and regulations as the board may prescribe. Any plan adopted by the board shall not provide for the granting of sabbatical leave to any faculty member who has served less than six years at the institution where he is employed, nor shall such leave be for more than one semester at full pay or two semesters at half pay. Any faculty member receiving a sabbatical leave shall be required to return and serve for at least three years at the institution from which he was granted the leave or to repay to the institution the compensation received by him during his leave. Compensation to a faculty member on sabbatical leave shall be paid from the regular

personal services appropriation of the institution where he is employed. (1953, c. 74.)

Editor's note.—A former section bearing the same number authorized rules to govern purchase, distribution, use and care of free textbooks. It derived from Code 1923, c. 45, § 13, and was repealed by Acts 1947, c. 72.

Constitutionality. — This section does not violate the provisions of W. Va. Const., art. X, § 6, and the granting of sabbatical leaves to faculty members at the educational institutions under the control of the state board of education for the purposes enumerated in this section, and the payment of money to a

faculty member at an educational institution, under the control of the state board of education, from the personal services appropriation of the institution for the purpose of such sabbatical leave, does not constitute the payment of public money for a private purpose, and is not an unconstitutional grant of the credit of the State in violation of W. Va. Const., art. X, § 6. *State ex rel. West Virginia Bd. of Educ. v. Sims*, 139 W. Va. 802, 81 S.E.2d 665 (1954).

Cited in State ex rel. Bache & Co. v. Gainer, 177 S.E.2d 10 (W. Va. 1970).

Appendix B

TABLE 22.--SUMMARY OF LEAVE PROVISIONS REPORTED FOR
TEACHERS, 1972-73*

PROVISION	ENROLLMENT STRATUM			TOTAL-- 1 THRU 5	6-- 3,000- 5,999	7-- 1,200- 2,999
	1, 2 AND 3-- 25,000 OR MORE	4-- 12,000- 24,999	5-- 6,000- 11,999			
LEAVE						
NO. OF DAYS GRANTED						
MAXIMUM TIME GRANTED						
NONE	22.6	29.2	30.1	28.8	32.0	46.8
1 SEMESTER	2.3	.9	.7	1.0	1.5	1.5
2 SEMESTERS	57.6	50.7	47.4	49.8	49.4	30.4
1 FULL YEAR	6.8	5.6	5.1	5.5	1.5	2.7
OTHER	...	.3	...	.1	...	...
NO DATA	10.7	13.3	16.6	14.8	15.6	16.5
.....	100.0	100.0	99.9	100.0	100.0	99.9
OF SYSTEMS REPORTING ..	177	339	704	1,220	269	260
AMOUNT OF SALARY PAID BY BOARD WHILE ON ABBATICAL LEAVE						
NONE	1.6	2.1	8.1	5.5	14.6	16.2
LESS THAN ONE-HALF ..	2.4	1.7	1.7	1.8	.5	1.5
ONE-HALF	65.4	55.8	45.7	51.5	38.4	41.2
MORE THAN ONE-HALF BUT LESS THAN FULL	8.7	11.6	8.7	9.5	9.2	2.9
FULL SALARY	3.1	3.0	6.7	5.1	7.0	2.9
OTHER	3.1	2.6	4.4	3.7	3.8	1.5
NO DATA	15.7	23.2	24.7	22.9	26.5	33.8
.....	100.0	100.0	100.0	100.0	100.0	100.0
OF SYSTEMS REPORTING ..	127	233	481	841	185	136

Source: Research Report 1973-R2, Salary Schedules and Fringe Benefits for Teachers, 1972-73 (Washington, D.C.: National Education Association, 1973).

*Local school systems with pupil enrollments of 6,000 or more.

Appendix C

Sabbatical Leave and Health Insurance Benefits, Classroom Teachers 1973-74

District	Sabbatical Leave for		Salary paid for		Health Ins. paid by board for	
	Whole yr	Half yr	Study	Travel	Employee	Dependents
Baltimore, MD	NA	NA	NA	NA	100%	0
Baltimore Co, MD	Yes	0	0	0	90%	90%
Bard Co, FL	Yes	Yes	50%	50%	100%	0
Bago, IL	Yes	Yes	Diff in sub pay	0	100%	100%
Beland, OH	Yes	0	0	0	100%	100%
Bembus, OH	Yes	0	Diff in reg salary and BA minimum		100%	100%
B COUNTY, FL	aYes	aYes	75%	50%	100%	0
Bs, TXb	Yes	0	100%	100%	NA	NA
Bolt, MI	Yes	Yes	0	0	100%	50%
B Co, FL	Yes	Yes	50%	0	100%	0
Ban Co, VA	Yes	0	50%	0	100%	75%
						(Family plan)
Bii, State of	Yes	Yes	50%	50%	100%	100%
Borough Co, FL	0	0	0	0	100%	0
Bton, TX	0	0	0	0	cPart	cPart
B Angeles, CA	Yes	Yes	50%	50%	100%	100%
Bhis, TN	Yes	Yes	50%	50%	50%	20%
Baukee, WI	Yes	Yes	50%	0	100%	100%
Bgomery, MD	Yes	0	50-60%	0	d	d
B Orleans, LA	Yes	Yes	Diff in sub pay	Diff in sub pay	25%	0
B York, NY	NA	NA	NA	NA	NA	NA
B adelpia, PA	Yes	Yes	0	0	50-60%	40-60%
						(2 plans)
B ace Geo's Co, MD	Yes	0	e50%	0	70%	70%
B Louis, MO	Yes	Yes	50%	50%	100%	100%
B Diego, CA	Yes	Yes	50%	50%	75-100%	75-100%
						(3 plans)
B ington, DC	NA	NA	NA	NA	NA	NA

temporarily suspended

72-73 data

ount not reported

c employees and dependents: years in plan, 1-3, 55%; 4-6, 65%; 7+, 75%
to exceed MA+30 maximum salary

Source: Department of Administrative Research, Salary Schedules Study,

Twenty-five Largest United States School Districts, Research Report,

Volume XXI, Number 6, Dade County Public Schools, Miami, Florida 33132.

Appendix D

Sabbatical Leave Benefits for
Administrative and Supervisory Personnel
in Public Schools, 1973-74

SABBATICAL LEAVE					
MAXIMUM TIME GRANTED:					
NONE - - - - -	23.2	33.0	37.3	56.2	40.2
1 SEMESTER - - - - -	1.4	.5	.4	1.8	1.0
2 SEMESTERS - - - - -	16.7	11.0	11.6	7.8	11.0
1 CALENDAR (OR FISCAL) YEAR - - - - -	57.2	54.1	48.9	30.7	45.5
OTHER - - - - -	1.4	1.0	1.7	1.1	1.3
NO DATA - - - - -	.0	.5	.0	2.5	.9
TOTAL - - - - -	99.9	100.1	99.9	100.1	99.9
NUMBER SYSTEMS - - - - -	139	209	233	283	263
PORTION OF SALARY PAID BY BOARD:***					
NONE - - - - -	7.6	8.8	13.7	11.2	10.5
LESS THAN 1/2 - - - - -	1.9	2.9	1.4	3.4	2.4
ONE HALF - - - - -	61.9	65.0	57.5	57.8	60.5
MORE THAN 1/2 BUT NOT ALL - - - - -	16.2	13.1	8.9	18.1	13.7
FULL SALARY - - - - -	.0	5.1	6.8	3.4	4.2
OTHER - - - - -	12.4	4.4	11.6	6.0	8.5
NO DATA - - - - -	.0	.7	.0	.0	.2
TOTAL - - - - -	100.0	100.0	99.9	99.9	100.0
NUMBER SYSTEMS - - - - -	105	137	146	116	504

*** PERCENT OF THOSE SYSTEMS GRANTING SABBATICAL LEAVE.

Source: Educational Research Service, Fringe Benefits for Administrative and Supervisory Personnel in Public Schools, 1973-74 (Arlington, Va.: Educational Research Service, Inc., 1974), p. 12.

Appendix E

NEA Guidelines to Sabbatical Leave

30. *Sabbatical leave*

The purpose of the benefit is to enable teachers to engage in full-time study, travel, research, work experience, or other professionally advantageous activity for an entire school year.

For the administration of this benefit, it is suggested that sabbatical leave applications be reviewed by a joint panel representing both the association and school officials in equal numbers. When there is pronounced difference of opinion among panel members on the merits of a particular application, it might be

advisable for the panel to seek the opinion of a disinterested expert in the field of activity to which the application relates.

Desirable coverage: sabbatical leave available after no more than 5 years of service for a full contract year at 75 percent of salary, or after no more than 7 years of service at 100 percent of salary; leave granted upon application approved by joint review panel representing both association and school system. Teachers on sabbatical leave receive normal salary increments, retirement credit, and fringe benefits while on leave and are entitled to return to their former position, if available, or if not available, to a substantially equivalent position. Extended leave of absence without salary available to teachers who do not meet service requirements for sabbatical; leave granted upon application approved by joint review panel. Teachers granted extended leave should not have their status in regard to placement on the salary scale, retirement credit, or other factors related to length of service, reduced because of absence; assignment upon return from leave should be to their former position if available, or if not available, to a substantially equivalent position.

Source: Guidelines to Fringe Benefits for Members of the Teaching Profession (Washington, D. C.: National Education Association, 1969), pp. 26-27.

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Except for the statutes on sabbatical leave in Appendix A, state statutes are not included since they would have run into several thousand pages. Because some of the references cited below are bibliographies, the following list is briefer than the over-all list bearing on the study. Also, the legal cases are not cited separately since they are discussed in the articles, especially on preemption. The bibliography, especially the addendum, also includes some references which appeared after the text of the study was completed, but which should be consulted in follow-up analysis.

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